

TIPS VENDOR AGREEMENT

Between _____ Siemens Industry, Inc. _____ and
(Company Name)

THE INTERLOCAL PURCHASING SYSTEM (TIPS), a Department of Texas Education Service Center Region 8 for TIPS RFQ 200103 Energy Savings Performance Contracts (2)

General Information

The Vendor Agreement ("Agreement") made and entered into by and between The Interlocal Purchasing System (hereinafter referred to as "TIPS" respectfully) a government cooperative purchasing program authorized by the Region 8 Education Service Center, having its principal place of business at 4845 US Hwy 271 North, Pittsburg, Texas 75686. This Agreement consists of the provisions set forth below, including provisions of all Attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any Attachment, the provisions set forth shall control unless otherwise agreed by the parties in writing and by signature and date on the attachment.

A Purchase Order, Agreement or Contract is the TIPS Member's approval providing the authority to proceed with the negotiated delivery order under the Agreement. Special terms and conditions as agreed between the Vendor and TIPS Member should be added as addendums to the Purchase Order, Agreement or Contract. Items such as certificate of insurance, bonding requirements, small or disadvantaged business goals are some, but not all, of the addendums possible.

Terms and Conditions

Freight

All quotes to members shall provide a line item for cost for freight or shipping regardless if there is a charge or not. If no charge for freight or shipping, indicate by stating "No Charge" or "\$0", "included in price" or other similar indication. Otherwise, all shipping, freight or delivery changes shall be passed through to the TIPS Member at cost with no markup and said charges shall be agreed by the TIPS Member unless alternative shipping terms are agreed by TIPS as a result of the proposal award.

Warranty Conditions

All new supplies equipment and services shall include ***manufacturer's minimum standard warranty*** unless otherwise agreed to in writing. Vendor shall be legally permitted to sell all products offered for sale to TIPS Members if the offering is included in the Request for Proposal category. All goods proposed and sold shall be new unless clearly stated in writing.

Customer Support

The Vendor shall provide timely and accurate customer support for orders to TIPS Members as agreed by the Parties. Vendors shall respond to such requests within a commercially reasonable time after receipt of the request. If support and/or training is a line item sold or packaged with a sale, support shall be as agreed with the TIPS Member.

Agreements

Agreements for purchase will normally be put into effect by means of a purchase order(s) executed by authorized agents of the TIPS Member participating government entities, but other means of placing an order may be used at the Member's discretion.

Tax exempt status

Most TIPS Members are tax exempt and the related laws and/or regulations of the controlling jurisdiction(s) of the TIPS Member shall apply.

Assignments of Agreements

No assignment of this Agreement may be made without the prior notification of TIPS. Written approval of TIPS shall not be unreasonably withheld. Payment for delivered goods and services can only be made to the awarded Vendor, Vendor designated reseller or vendor assigned company.

Disclosures

- Vendor and TIPS affirms that he/she or any authorized employees or agents has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement.
- Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with the TIPS program.
- The Vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is 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 vendors in the award of this Agreement.

Term and Renewal of Agreements

The Agreement with TIPS is for approximately two (2) years with the expiration date to be March 31, 2022

The scheduled Agreement termination date shall be the last date of the month of the last month of the agreement's legal effect. **Example:** *If the agreement is scheduled to end on May 23, the anniversary date of the award, it would actually be extended to May 31 in the last month of the last year the contract is active.*

Automatic Renewal Clauses Incorporated in Awarded Vendor Agreements with TIPS Members Resulting from the Solicitation and with the Vendor Named in this Agreement.

No Agreement for goods or services with a TIPS Member by the awarded vendor named in this Agreement that results from the solicitation award named in this Agreement, may incorporate an automatic renewal clause that exceeds month to month terms with which the TIPS Member must comply. All renewal terms incorporated in an Agreement by the vendor with the TIPS Member shall only be valid and enforceable when the vendor receives written confirmation by purchase order, executed Agreement or other written instruction issued by the TIPS Member for any renewal period. The purpose of this clause is to avoid a TIPS Member inadvertently renewing an Agreement during a period in which the governing body of the TIPS Member has not properly appropriated and budgeted the funds to satisfy the Agreement renewal. This term is not negotiable and any Agreement between a TIPS Member and a TIPS awarded vendor with an automatic renewal clause that conflicts with these terms is rendered void and unenforceable.

Shipments

Shipments

The Vendor shall ship, deliver or provide ordered products or services within a commercially reasonable time after the receipt of the order from the TIPS Member. If a delay in said delivery is anticipated, the Vendor shall notify TIPS Member as to why delivery is delayed and shall provide an estimated time for completion of the order. TIPS or the requesting entity may cancel the order if estimated delivery time is not acceptable or not as agreed by the parties.

Invoices

Each invoice or pay request shall include the TIPS Member's purchase order number or other identifying designation as provided in the order by the TIPS Member. If applicable, the shipment tracking number or pertinent information for verification of TIPS Member receipt shall be made available upon request.

Payments

The TIPS Member will make payments directly to the Vendor, the vendor assigned dealer or as agreed by the Vendor and the TIPS Member after receiving invoice and in compliance with applicable payment statute(s), whichever is the greater time or as otherwise provided by an agreement of the parties.

Pricing

Price increases will be honored according to the terms of the solicitation. All pricing submitted to TIPS shall include the participation fee, as provided in the solicitation, to be remitted to TIPS by the Vendor. Vendor will not show adding the fee to the invoice presented to TIPS Member customer.

Participation Fees

The Participation Fee that was published as part of the Solicitation and the fee published is the legally effective fee, along with any fee conditions stated in the RFP. Collection of the fees by TIPS is required under Texas Government Code §791.011 Et seq. Vendor or vendor assigned dealer agrees to pay the participation fee for all Agreement sales to TIPS on a monthly scheduled report or as otherwise agreed by the parties. To report sales, login to the TIPS Vendor Portal and click on the PO's and Payments tab. Pages 3-7 of the Vendor Portal User Guide will walk you through the process of reporting sales to TIPS. 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. The Vendor or vendor assigned dealers are responsible for keeping record of all sales that go through the TIPS Agreement and submitting same to TIPS. Failure to render the participation fee to TIPS shall constitute a breach of this agreement with our parent governmental entity, Texas Education Service Center Region 8, as established by the Texas legislature and shall be grounds for termination of this agreement and any other agreement held with TIPS and possible legal action. TIPS reserves all rights under the law to collect the fees due. Please contact TIPS at tips@tips-usa.com or call (866) 839-8477 if you have questions about paying fees.

Indemnity

The Vendor agrees to indemnify and hold harmless and defend TIPS, TIPS Member(s), officers and employees from and against all claims and suits by third parties for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and reasonable attorney's fees, arising out of, or resulting from, Vendor's performance under this Agreement, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part, upon allegations of negligent or intentional acts on the part of the Vendor, its officers, employees, agents, subcontractors, licensees, or invitees. Parties found liable shall pay their proportionate share of damages as agreed by the parties or as ordered by a court of competent jurisdiction over the case. **NO LIMITATION OF LIABILITY FOR DAMAGES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARE PERMITTED OR AGREED BY TIPS/ESC REGION 8.** Per Texas Education Code §44.032(f), and pursuant to its requirements only, reasonable Attorney's fees are recoverable by the prevailing party in any dispute resulting in litigation.

State of Texas Franchise Tax

By signature hereon, the bidder hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code.

Miscellaneous

The Vendor acknowledges and agrees that continued participation in TIPS is subject to TIPS sole discretion and that any Vendor may be removed from the participation in the Program at any time with or without cause. Nothing in the Agreement or in any other communication between TIPS and the Vendor may be construed as a guarantee that TIPS or TIPS Members will submit any orders at any time. TIPS reserves the right to request additional proposals for items or services already on Agreement at any time.

Purchase Order Pricing/Product Deviation

If a deviation of pricing/product on a purchase order or contract modification occurs between the Vendor and the TIPS Member, TIPS must be notified within five (5) business days of receipt of change order.

Termination for Convenience of TIPS Agreement Only

TIPS reserves the right to terminate this agreement for cause or no cause for convenience with a thirty (30) days prior written notice. Termination for convenience is conditionally required under Federal Regulations 2 CFR part 200 if the customer is using federal funds for the procurement. All purchase orders presented to the Vendor, but not fulfilled by the Vendor, by a TIPS Member prior to the actual termination of this agreement shall be honored at the option of the TIPS Member. The awarded vendor may terminate the agreement with ninety (90) days prior written notice to TIPS 4845 US Hwy North, Pittsburg, Texas 75686. The vendor will be paid for goods and services delivered prior to the termination provided that the goods and services were delivered in accordance with the terms and conditions of the terminated agreement. This termination clause does not affect the sales agreements executed by the Vendor and the TIPS Member customer pursuant to this agreement. TIPS Members may negotiate a termination for convenience clause that meets the needs of the transaction based on applicable factors, such as funding sources or other needs.

TIPS Member Purchasing Procedures

Usually, purchase orders or their equal are issued by participating TIPS Member to the awarded vendor and should indicate on the order that the purchase is per the applicable TIPS Agreement number. Orders are typically emailed to TIPS at tipspo@tips-usa.com.

- Awarded vendor delivers goods/services directly to the participating member.
- Awarded vendor invoices the participating TIPS Member directly.
- Awarded vendor receives payment directly from the participating member.
- Awarded vendor reports sales monthly to TIPS (unless prior arrangements have been made with TIPS for an alternative submission schedule).

Licenses

Awarded vendor shall maintain, in current status, all federal, state and local licenses, bonds and permits required for the operation of the business conducted by awarded vendor. Awarded vendor shall remain reasonably fully informed of and in compliance with all ordinances and regulations pertaining to the lawful

provision of goods or services under the Agreement. TIPS and TIPS Members reserves the right to stop work and/or cancel an order or terminate this or any other sales Agreement of any awarded vendor whose license(s) required for performance under this Agreement have expired, lapsed, are suspended or terminated subject to a 30-day cure period unless prohibited by applicable statute or regulation.

Novation

If awarded vendor sells or transfers all assets, rights or the entire portion of the assets or rights required to perform this Agreement, a successor in interest must guarantee to perform all obligations under this Agreement. A simple change of name agreement will not change the Agreement obligations of awarded vendor. TIPS will consider Contract Assignments on a case by case basis. TIPS must be notified within five (5) business days of the transfer of assets or rights.

Site Requirements (only when applicable to service or job)

Cleanup: When performing work on site at a TIPS Member's property, awarded vendor shall clean up and remove all debris and rubbish resulting from their work as required or directed by TIPS Member or as agreed by the parties. Upon completion of work, the premises shall be left in good repair and an orderly, neat, clean and unobstructed condition.

Preparation: Awarded vendor shall not begin a project for which TIPS Member has not prepared the site, unless awarded vendor does the preparation work at no cost, or until TIPS Member includes the cost of site preparation in a purchase order.

Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.

Registered sex offender restrictions: For work to be performed at schools, awarded vendor agrees that no employee of a sub-contractor who has been adjudicated to be a registered sex offender will perform work at any time when students are, or reasonably expected to be, present unless otherwise agreed by the TIPS Member. Awarded vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the TIPS Member's discretion.

Awarded vendor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge. **Safety measures:** Awarded vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Awarded vendor shall post warning signs against all hazards created by the operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

Smoking

Persons working under Agreement shall adhere to the TIPS Member's or local smoking statutes, codes or policies.

Marketing

Awarded vendor agrees to allow TIPS to use their name and logo within TIPS website, marketing materials and advertisement subject to any reasonable restrictions provided to TIPS in the Proposal to the Solicitation. The Vendor may submit an acceptable use directive for Vendor's names and logos with which TIPS agrees to comply. Any use of TIPS name and logo or any form of publicity, inclusive of press release, regarding this Agreement by awarded vendor must have prior approval from TIPS which will not be unreasonably withheld. Request may be made by email to TIPS@TIPS-USA.COM

Supplemental Agreements

The TIPS Member entity participating in the TIPS Agreement and awarded vendor may enter into a separate Supplemental Agreement or contract to further define the level of service requirements over and above the minimum defined in this Agreement such as but not limited to, invoice requirements, ordering requirements, specialized delivery, etc. Any Supplemental Agreement or contract developed as a result of this Agreement is exclusively between the TIPS Member entity customer and the Vendor. TIPS, its agents, TIPS Members and employees not a party to the Supplemental Agreement with the TIPS Member customer, shall not be made party to any claim for breach of such agreement unless named and agreed by the Party in question in writing in

the agreement. If a Vendor submitting a Proposal requires TIPS and/or TIPS Member to sign an additional agreement, those agreements shall comply with the award made by TIPS to the Vendor. Supplemental Vendor's Agreement documents may not become part of TIPS's Agreement with vendor unless and until an authorized representative of TIPS reviews and approves it. TIPS review and approval may be at any time during the life of this Vendor Agreement. TIPS permits TIPS Members to negotiate additional terms and conditions with the Vendor for the provision of goods or services under the Vendor's TIPS Agreement so long as they do not materially conflict with this Agreement.

Survival Clause

All applicable sales, leases, Supplemental Agreements, contracts, software license agreements, warranties or service agreements that were entered into between Vendor and TIPS or the TIPS Member Customer under the terms and conditions of this Agreement shall survive the expiration or termination of this Agreement. All Orders, Purchase Orders issued or contracts executed by TIPS or a TIPS Member and accepted by the Vendor prior to the expiration or termination of this agreement, shall survive expiration or termination of the Agreement, subject to previously agreed terms and conditions agreed by the parties or as otherwise specified herein relating to termination of this agreement.

Legal obligations

It is the responding Vendor's responsibility to be aware of and comply with all local, state and federal laws governing the sale of products/services identified in the applicable Solicitation that resulted in this Vendor Agreement and any awarded Agreement thereof. Applicable laws and regulations must be followed even if not specifically identified herein.

Audit rights

Due to transparency statutes and public accountability requirements of TIPS and TIPS Members', the awarded Vendor shall, at their sole expense, maintain appropriate due diligence of all purchases made by TIPS Member that utilizes this Agreement. TIPS and Region 8 ESC each reserve the right to audit the accounting of TIPS related purchases for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective date of termination. In order to ensure and confirm compliance with this agreement, TIPS shall have authority to conduct audits of Awarded Vendor's pricing or TIPS transaction documentation with TIPS Members with 30 days' notice unless the audit is ordered by a Court Order or by a Government Agency with authority to do so without notice. Notwithstanding the foregoing, in the event that TIPS is made aware of any pricing being offered to eligible entities that is materially inconsistent with the pricing under this agreement, TIPS shall have the ability to conduct the audit internally or may engage a third- party auditing firm to investigate any possible non-compliant conduct or may terminate the Agreement according to the terms of this Agreement. In the event of an audit, the requested materials shall be reasonably provided in the time, format and at the location acceptable to Region 8 ESC or TIPS. TIPS agrees not to perform a random audit the TIPS transaction documentation more than once per calendar year, but reserves the right to audit for just cause or as required by any governmental agency or court with regulatory authority over TIPS or the TIPS Member.

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 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.

Choice of Law

The Agreement between the Vendor and TIPS/ESC Region 8 and any addenda or other additions resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles.

Venue, Jurisdiction and Service of Process

Any Proceeding arising out of or relating to this procurement process or any contract issued by TIPS resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Camp County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world.

Venue for any dispute resolution process, other than litigation, between TIPS and the Vendor shall be located in Camp or Titus County, Texas.

Project Delivery Order Procedures

The TIPS Member having approved and signed an interlocal agreement, or other TIPS Membership document, may make a request of the awarded vendor under this Agreement when the TIPS Member desires goods or services awarded to the Vendor. Notification may occur via phone, the web, courier, email, fax, or in person. Upon notification of a pending request, the awarded vendor shall acknowledge the TIPS Member's request as soon as possible, but must make contact with the TIPS Member within two working days.

Status of TIPS Members as Related to This Agreement

TIPS Members stand in the place of TIPS as related to this agreement and have the same access to the proposal information and all related documents. TIPS Members have all the same rights under the awarded Agreement as TIPS.

Vendor's Resellers as Related to This Agreement

Vendor's Named Resellers under this Agreement shall comply with all terms and conditions of this agreement and all addenda or incorporated documents. All actions related to sales by Authorized Vendor's Resellers under this Agreement are the responsibility of the Awarded Vendor. If Resellers fail to report sales to TIPS under your Agreement, the awarded Vendor is responsible for their contractual failures and shall be billed for the fees. The awarded vendor may then recover the fees from their named reseller.

Support Requirements

If there is a dispute between the awarded vendor and TIPS Member, TIPS or its representatives will assist in conflict resolution or third party if requested by either party. TIPS, or its representatives, reserves the right to inspect any project and audit the awarded Vendor's TIPS project files, documentation and correspondence related to the requesting TIPS Member's order. If there are confidentiality requirements by either party, TIPS shall comply to the extent permitted by law.

Incorporation of Solicitation

The TIPS Solicitation which resulted in this Vendor Agreement, whether a Request for Proposals, the

Request for Competitive Sealed Proposals or Request for Qualifications solicitation, or other, the Vendor's response to same and all associated documents and forms made part of the solicitation process, including any addenda, are hereby incorporated by reference into this Agreement as if copied verbatim.

SECTION HEADERS OR TITLES

THE SECTION HEADERS OR TITLES WITHIN THIS DOCUMENT ARE MERELY GUIDES FOR CONVENIENCE AND ARE NOT FOR CLASSIFICATION OR LIMITING OF THE RESPONSIBILITIES OF THE PARTIES TO THIS DOCUMENT.

STATUTORY REQUIREMENTS

Texas governmental entities are prohibited from doing business with companies that fail to certify to this condition as required by Texas Government Code Sec. 2270.

By executing this agreement, you certify that you are authorized to bind the undersigned Vendor and that your company (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Agreement.

You certify that your company is not listed on and does not and will not do business with companies that are on the Texas Comptroller of Public Accounts list of Designated Foreign Terrorists Organizations per Texas Gov't Code 2270.0153 found at <https://comptroller.texas.gov/purchasing/docs/foreign-terrorist.pdf>

You certify that if the certified statements above become untrue at any time during the life of this Agreement that the Vendor will notify TIPS within three (3) business day of the change by a letter on Vendor's letterhead from and signed by an authorized representative of the Vendor stating the non-compliance decision and the TIPS Agreement number and description at:

Attention: General Counsel
ESC Region 8/The Interlocal Purchasing System (TIPS)
4845 Highway 271 North
Pittsburg, TX, 75686
And by an email sent to bids@tips-usa.com

Insurance Requirements

The undersigned Vendor agrees to maintain the below minimum insurance requirements for TIPS Contract Holders.

General Liability	\$1,000,000 each Occurrence/ Aggregate Automobile
Liability	\$300,000 Includes owned, hired & non-owned
Workers' Compensation	Statutory limits for the jurisdiction in which the Vendor performs under this Agreement.
Umbrella Liability	\$1,000,000

When the contractor or its subcontractors are liable for any damages or claims, the contractors' policy, when the Vendor is responsible for the claim, must be primary over any other valid and collectible insurance carried by the District. Any immunity available to TIPS or TIPS Members shall not be used as a defense by the contractor's insurance policy. The coverages and limits are to be considered minimum requirements and in no way limit the liability of the Contractor(s). Insurance shall be written by a carrier with an A-; VII or better rating in accordance with current A.M. Best Key Rating Guide. Only deductibles applicable to property damage are acceptable, unless proof of retention funds to cover said deductibles is provided. "Claims made" policies will not be accepted. Vendor's required minimum coverage shall not be suspended, voided, cancelled, non-renewed or

reduced in coverage or in limits unless replaced by a policy that provides the minimum required coverage except after thirty (30) days prior written notice by certified mail, return receipt requested has been given to TIPS or the TIPS Member if a project or pending delivery of an order is ongoing. Upon request, certified copies of all insurance policies shall be furnished to the TIPS or the TIPS Member.

Special Terms and Conditions

- **Orders:** All vendor orders received from TIPS Members must be emailed to TIPS at tipspo@tips-usa.com. Should a TIPS Member send an order directly to the Vendor, it is the Vendor's responsibility to forward a copy of the order to TIPS at the email above within 3 business days and confirm its receipt with TIPS.
- **Vendor Encouraging Members to bypass TIPS agreement:** Encouraging TIPS Members to purchase directly from the Vendor or through another agreement, when the Member has requested using the TIPS cooperative Agreement or price, and thereby bypassing the TIPS Agreement is a violation of the terms and conditions of this Agreement and will result in removal of the Vendor from the TIPS Program.
- **Order Confirmation:** All TIPS Member Agreement orders are approved daily by TIPS and sent to vendor. The Vendor should confirm receipt of orders to the TIPS Member (customer) within 3 business days.
- **Vendor custom website for TIPS:** If Vendor is hosting a custom TIPS website, updated pricing when effective. TIPS shall be notified when prices change in accordance with the award.
- **Back Ordered Products:** If product is not expected to ship within the time provided to the TIPS member by the Vendor, customer is to be notified within 3 business days and appropriate action taken based on customer request.

The TIPS Vendor Agreement Signature Page is inserted here.

ADDENDUM TO TIPS VENDOR AGREEMENT WITH SIEMENS, INC., RFQ 200209 ENERGY SAVINGS PERFORMANCE CONTRACT (2)

This addendum to the Texas Interlocal Purchasing System (TIPS) Vendor Agreement is entered into this 12th day of June, 2020 by Siemens Industry, Inc., a Delaware corporation and TIPS. Defined terms in the Vendor Agreement shall have the same meaning herein. In the event of conflict between the terms of this Addendum and the Vendor Agreement, this Addendum shall control.

- 1) TIPS represents and warrants to Vendor that this Request for Qualifications expressly complies with the statutory procurement requirements found in Texas Statutes, Local Government in Texas Local Government Code § 302 in and Public Schools in Texas Education Code § 44.901.

TIPS provides the first part of the compliance with statutes and that is the Request for Qualifications and has determined that all awarded Vendors are Qualified to perform an Energy Savings Performance Contract according to Texas Statutory requirements. It is up to the TIPS Member entity to decide if the process meets their compliance standards and how they choose to use the results of the TIPS RFQ process. See the recommended process for a TIPS Member to follow in the RFQ 200209 specifications. TIPS' part in the overall Energy Savings Performance Contract process for a Texas governmental entity member is only one of many steps required by the statutes for the Texas governmental entity TIPS Member. TIPS has followed Texas Statutory requirements for the Request for Qualification process per Texas Education Code § 44.901 (h) (partial) (Notice of the request for qualifications shall be published in the manner provided for competitive bidding.) It is up to the TIPS Member entity to complete the process of selection as provided in the applicable statutes for their entity.

SEE Below and also the document titled TIPS Advisory Document for Member Use of the TIPS ESCO 200209 below at end of this document

TEXAS GOVERNMENT CODE Sec. 2254.004 provides the following methodology. TIPS is identifying highly 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 which vendor is the most highly qualified for the Member's purposes as provided below in section. The TIPS member 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 a Energy Savings Performance Contract. The Statutes are included below to specifically describe what types of Energy Savings Performance Contracts are permitted and how they are defined specifically. TIPS has members that are defined in both sections of the law and the definitions for each type are provided in the statutes below. Energy Savings Performance Contracts entered into by the awarded vendors and the TIPS members pursuant to this RFQ, shall comply with the requirements specified in the following statutes depending on the applicable TIPS member entity classifications and which statute would apply to the TIPS member as if they were a Texas entity, if they are located in another state.

Example #1: A public PK-12 school or a community college in Texas or a state other than Texas would follow the Texas Education Code statute in determining what is permissible under the statute.

Example#2: A municipality or county government in Texas or a state other than Texas would follow the Texas Local

Government Code statute in determining what is permissible under the statute.

- 1) Marketing - TIPS may not use Siemens logo, name or any mark owned by Siemens without the prior written consent of Siemens.
- 2) Audit - Audit right of TIPS shall be on 60 days prior written notice, occur at Siemens office, occur at the sole expense of TIPS and be expressly limited to orders secured by Siemens pursuant to the TIPS procurement process;
- 3) Compensation - Siemens shall only be required to pay the TIPS administration fee upon project completion and receipt of all monies due Siemens under the project agreement with payment due TIPS from Siemens within 30 calendar days of the date Siemens receives of payment from the TIPS Member and no later than August 31st of the year in which the compensation was received by Siemens.
- 4) Shipping - shipping charges to be billed at Siemens standard rates, FOB Siemens warehouse;
- 5) Warranty - Siemens shall warrant its work for a period of one (1) year. Siemens shall not have warranty responsibility for any repairs caused by negligent repair/maintenance, failure to follow manufacturer specifications or negligence and accident. Siemens shall not warrant any 3rd party equipment but shall assign all 3rd party manufacturer warranties.
- 6) Assignment - Siemens may assign this agreement to any subsidiary of Siemens AG.
- 7) Payments - all payment shall be made to Siemens as set forth in the project agreement.
- 8) Siemens indemnity obligation to TIPS shall not exceed two times the value of the project giving rise to the claim and Siemens shall have no obligation to indemnify TIPS to the extent that the indemnity claim arose out of the acts or omissions of TIPS, its agents, contractors, employees, officers, or members. Notwithstanding anything to the contrary in this Vendor Agreement, Siemens liability to TIPS for all claims, losses and damages shall not exceed two times the value of the project giving rise to the claim. SIEMENS IS NOT LIABLE, UNDER ANY LEGAL OR EQUITABLE THEORY FOR: LOSS OF USE, REVENUE, SAVINGS, PROFIT, INTEREST, OR FOR ANY TYPE OF INDIRECT, SPECIAL, LIQUIDATED, PUNITIVE, EXEMPLARY, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.
- 9) omitted
- 10) In the event of a conflict between the Supplemental Agreement and this Vendor Agreement, the Supplemental Agreement shall control.
- 11) The third paragraph of the "Statutory Requirements" section of the Terms and Conditions is modified as follows:
 - a. You certify that your company is not on a list prepared and maintained under 2252.153 of companies that do business with The Texas Comptroller of Public Accounts list of Designated Foreign Terrorist Organizations per Texas Government Code Section 2

RFP deviations

- 1) Siemens shall warrant its work for a period of one (1) year. Siemens shall not have warranty responsibility for any repairs caused by negligent repair/maintenance, failure to follow manufacturer specifications or negligence and accident. Siemens shall not warrant any 3rd party equipment but shall assign all 3rd party manufacturer warranties.
- 2) Siemens may assign this agreement to any subsidiary of Siemens AG.
- 3) payments - all payment shall be made to Siemens as set forth in the project agreement.
- 4) Siemens indemnity obligation

Attribute 67-68

The successful vendor will be expected to indemnify and hold harmless the TIPS, its officers, employees, agents, representatives, contractors, assignees and designees from and against any and all liability, actions, claims, demands or suits, and all related costs, attorney's fees and expenses arising out of, or resulting from any acts or omissions of the vendor or its agents, employees, subcontractors, or suppliers in the execution or performance of any agreements ultimately made by TIPS and the vendor. Do you agree to these terms?

Siemens requests that any obligation to indemnify TIPS be limited to the value of the engagement giving rise to the claim and further limited to the extent the liability, actions, claims, demands or suits arise out of the acts of TIPS, its officers, employees, agents, representatives, contractors, assignees and designees.

Siemens requests that the phrase "agents, representatives, contractors, assignees and designees" be deleted from the its indemnity obligations.

Attribute 59 60

The parties shall be entitled to exercise any right or remedy available to it either at law or in equity, subject to the choice of law, venue and service of process clauses limitations agreed herein. Nothing in this agreement shall commit the TIPS to an arbitration resolution of any disagreement under any circumstances. Any Claim arising out of or related to the Contract, except for those specifically waived under the terms of the Contract, may, after denial of the Board of Directors, be subject to mediation at the request of either party. Any issues not resolved hereunder must be referred to non-binding mediation to be conducted by a mutually agreed upon mediator as a prerequisite to the filing of any lawsuit over such issue(s). The parties shall share the mediator's fee and any associated filing fee equally. Mediation shall be held in Camp or Titus County, Texas. Agreements reached in mediation shall be reduced to writing, and will be subject to the approval by the District's Board of Directors, signed by the Parties if approved by the Board of Directors, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas. Do you agree to these terms?

Request that the Dispute resolution process take place in Dallas, TX.

TIPS Advisory Document for Member Use of the TIPS Request for Qualifications 200209 Energy Savings Performance Contracts 2 (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) 200209 was performed by TIPS according to the applicable controlling Texas statutes for Texas governmental entities. The ESCO RFQ 200209 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.

200209 Energy Savings Performance Contract (2)
Agreement Signature Form

Company Name Siemens Industry, Inc.

Address 8850 Fallbrook Drive

City Houston State TX Zip 77064

Phone 281-949-3000 Fax _____

Email of Authorized Representative john.kovach@siemens.com

Name of Authorized Representative John Kovach

Title EPS Head

Signature of Authorized Representative 

Date 07/24/20

Approved By Legal

Digitally signed by
BOUCHARD MARC
Date: 2020.06.12 15:39:23
-05'00'

TIPS Authorized Representative Name Meredith Barton

Title Chief Operating Officer

TIPS Authorized Representative Signature 

Approved by ESC Region 8 

Date 8/13/2020

NOTICE TO MEMBERS REGARDING ATTRIBUTE RESPONSES

TIPS VENDORS RESPOND TO ATTRIBUTE QUESTIONS AS PART OF TIPS COMPETITIVE SOLICITATION PROCESS. THE VENDOR'S RESPONSES TO ATTRIBUTE QUESTIONS ARE INCLUDED HEREIN AS "SUPPLIER RESPONSE." PLEASE BE ADVISED THAT DEVIATIONS, IF ANY, IN VENDOR'S RESPONSE TO ATTRIBUTE QUESTIONS MAY NOT REFLECT VENDOR'S FINAL ATTRIBUTE RESPONSE, WHICH IS SUBJECT TO NEGOTIATIONS PRIOR TO AWARD. PLEASE CONTACT THE TIPS OFFICE AT 866-839-8477 WITH QUESTIONS OR CONCERNS REGARDING VENDOR ATTRIBUTE RESPONSE DEVIATIONS. PLEASE KEEP IN MIND THAT TIPS DOES NOT PROVIDE LEGAL COUNSEL TO MEMBERS. TIPS RECOMMENDS THAT YOU CONSULT YOUR LEGAL COUNSEL WHEN EXECUTING CONTRACTS WITH OR MAKING PURCHASES FROM TIPS VENDORS.



200209 Addendum 3

Siemens, Inc.

Supplier Response

Event Information

Number: 200209 Addendum 3
Title: Energy Savings Performance Contract (2)
Type: Request for Qualification
Issue Date: 2/6/2020
Deadline: 3/30/2020 03:00 PM (CT)
Notes: Pursuant to Texas laws, this is a Request for Qualifications ONLY for Energy Savings Performance Contract providers. DO NOT SUBMIT ANY PRICING.

Contact Information

Contact: Kristie Collins
Address: Region VIII Education Service Center
4845 US Highway 271 North
Pittsburg, TX 75686
Phone: +1 (866) 839-8477
Fax: +1 (866) 839-8472
Email: bids@tips-usa.com

Siemens, Inc. Information

Contact: Keith A. Chase
Address: 8850 Fallbrook Drive
Houston, TX 77064-4856
Phone: (813) 205-6130
Email: keith.chase@siemens.com

By submitting your response, you certify that you are authorized to represent and bind your company.

John Kovach

Signature

Submitted at 3/30/2020 10:59:06 AM

john.kovach@siemens.com

Email

Requested Attachments

Vendor Agreement

200209_Vendor_Agreement.pdf

The vendor must download the Vendor Agreement from the attachment tab, fill in the requested information and upload the completed agreement.

DO NOT UPLOAD encrypted or password protected files.

Agreement Signature Form

200209 Agreement_Signature_Form_for sig.pdf

If you have not taken exception or deviation to the agreement language in the solicitation attributes, download the AGREEMENT SIGNATURE FORM from the "ATTACHMENTS" tab. This PDF document is a fillable form. Download the document to your computer, fill in the requested company information, print the file, SIGN the form, SCAN the completed and signed AGREEMENT SIGNATURE FORM, and upload here.

If you have taken exception to any of the agreement language and noted the exception in the deviations section of the attributes for the agreement, complete the AGREEMENT SIGNATURE FORM, but DO NOT SIGN until those deviations have been negotiated and resolved with TIPS management. Upload the unsigned form here, because this is a required document.

Qualifications Document - REQUIRED

0_TIPS ESC8 RFQ 200209_FINAL_3-30-20.pdf

Please upload your Qualifications/Proposal document in PDF format to ION Wave software.

TIPS leaves it to the proposer to design their presentation to prove their qualifications sufficient to be awarded according to the specifications, evaluation criteria and other instructions in the RFQ.

References - REQUIRED

200209 references (002).pdf

The vendor must download the References spreadsheet from the attachment tab, fill in the requested information and upload the completed spreadsheet. DO NOT UPLOAD encrypted or password protected files.

Base Forms - REQUIRED

200209 required forms_for sig_SIGNED.pdf

The vendor must download the Base Forms document from the attachment tab, fill in the requested information and upload the completed form. Vendor must combine all requested information and scan into one document. (PDF Format ONLY)

DO NOT UPLOAD encrypted or password protected files.

HUB Subcontracting Plan Form OPTIONAL

No response

This plan is an OPTIONAL form. It has no bearing on scoring or award. It is used by Texas state Agencies and is here for your information. Texas State agencies will likely require you to provide them with a current form when contracting with you through your TIPS contract.

The vendor can download the HUB Subcontracting Plan Form from the "Attachments" tab and upload their HUB Subcontracting Plan Form.

No response

DO NOT UPLOAD encrypted or password protected files.

No response

DO NOT UPLOAD encrypted or password protected files.

No response

DO NOT UPLOAD encrypted or password protected files.

No response

DO NOT UPLOAD encrypted or password protected files.

No response

DO NOT UPLOAD encrypted or password protected files.

No response

at <https://www.tips-usa.com/assets/documents/docs/CIQ.pdf>.

1	Yes - No Disadvantaged/Minority/Women Business Enterprise - D/M/WBE (Required by some participating governmental entities) Vendor certifies that their firm is a D/M/WBE? Vendor must upload proof of certification to the "Response Attachments" D/M/WBE CERTIFICATES section. <input type="text" value="No"/>
2	Yes - No Highly Underutilized Business - HUB (Required by some participating governmental entities) Vendor certifies that their firm is a HUB? Vendor must upload proof of certification to the "Response Attachments" HUB CERTIFICATES section. <input type="text" value="No"/>
3	Yes - No The Vendor can provide services and/or products to all 50 US States? <input type="text" value="Yes"/>
4	States Served: If answer is NO to question #3, please list which states can be served. (Example: AR, OK, TX) <input type="text" value="No response"/>

5 Company and/or Product Description:

This information will appear on the TIPS website in the company profile section, if awarded a TIPS contract. (Limit 750 characters.)

Siemens Industry, Inc. is a NAESCO accredited ESCO providing performance contracting services nationally. Siemens is a global powerhouse focusing on the areas of electrification, automation, and digitalization. One of the world's largest producers of energy-efficient, resource-saving technologies, Siemens is a leading supplier of systems for energy management and power generation, and advanced transportation solutions. Siemens in the U.S. reported revenue of \$23.7 billion, including \$5.0 billion in exports, and employs approximately 50,000 people throughout all 50 states and Puerto Rico. Siemens has over 350 offices in US across the product and service portfolio, making us a national as well as a local partner, regardless of where customer operations are sited.

6 Primary Contact Name

Primary Contact Name

Dan Schmitz

7 Primary Contact Title

Primary Contact Title

Account Executive

8 Primary Contact Email

Primary Contact Email

danielschmitz@siemens.com

9 Primary Contact Phone

Enter 10 digit phone number. (No dashes or extensions)

Example: 8668398477

2148037392

10 Primary Contact Fax

Enter 10 digit phone number. (No dashes or extensions)

Example: 8668398477

9727511194

11 Primary Contact Mobile

Enter 10 digit phone number. (No dashes or extensions)

Example: 8668398477

2148037392

12 Secondary Contact Name

Secondary Contact Name

Keith Chase

13 Secondary Contact Title

Secondary Contact Title

Sales Manager

14 Secondary Contact Email

Secondary Contact Email

keith.chase@siemens.com

15	Secondary Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="2816404553"/>
16	Secondary Contact Fax Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="281-949-3100"/>
17	Secondary Contact Mobile Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="2816404553"/>
18	Admin Fee Contact Name Admin Fee Contact Name. This person is responsible for paying the admin fee to TIPS. <input type="text" value="Melissa Martin"/>
19	Admin Fee Contact Email Admin Fee Contact Email <input type="text" value="melissa.martin@siemens.com"/>
20	Admin Fee Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="5042012079"/>
21	Purchase Order Contact Name Purchase Order Contact Name. This person is responsible for receiving Purchase Orders from TIPS. <input type="text" value="Dan Schmitz"/>
22	Purchase Order Contact Email Purchase Order Contact Email <input type="text" value="danielschmitz@siemens.com"/>
23	Purchase Order Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="2148037392"/>
24	Company Website Company Website (Format - www.company.com) <input type="text" value="https://new.siemens.com/us/en/company/about.html"/>
25	Federal ID Number: Federal ID Number also known as the Employer Identification Number. (Format - 12-3456789) <input type="text" value="13-2762488"/>

26	Primary Address Primary Address <input style="width: 90%;" type="text" value="8600 N. Royal Lane, #100"/>
27	Primary Address City Primary Address City <input style="width: 90%;" type="text" value="Irving"/>
28	Primary Address State Primary Address State (2 Digit Abbreviation) <input style="width: 90%;" type="text" value="TX"/>
29	Primary Address Zip Primary Address Zip <input style="width: 90%;" type="text" value="75063"/>
30	Search Words: Please list search words to be posted in the TIPS database about your company that TIPS website users might search. Words may be product names, manufacturers, or other words associated with the category of award. YOU MAY NOT LIST NON-CATEGORY ITEMS. (Limit 500 words) (Format: product, paper, construction, manufacturer name, etc.) <input style="width: 90%;" type="text" value="Energy Performance Contracting, Distributed Energy Services, Sustainability, Energy Conservation, Water Conservation, IoT, Lighting, Solar, Microgrid, ESCO, Energy Management"/>
31	Yes - No Do you wish to be eligible to participate in a TIPS contract in which a TIPS member utilizes federal funds on contracts exceeding \$100,000? (Non-Construction) <input style="width: 100px;" type="text" value="Yes"/>
32	Yes - No Certification of Residency (Required by the State of Texas) Company submitting bid is a Texas resident bidder? <input style="width: 100px;" type="text" value="Yes"/>
33	Company Residence (City) Vendor's principal place of business is in the city of? <input style="width: 90%;" type="text" value="Alpharetta"/>
34	Company Residence (State) Vendor's principal place of business is in the state of? <input style="width: 90%;" type="text" value="GA"/>
35	Felony Conviction Notice: (Required by the State of Texas) My firm is, as outlined on PAGE 5 in the Instructions to Bidders document: (Questions 36 - 37)
36	Yes - No A publicly held corporation; therefore, this reporting requirement is not applicable? <input style="width: 100px;" type="text" value="Yes"/>

3
7

Yes - No

Is owned or operated by individual(s) who has/have been convicted of a felony?

No

3
8

Yes - No

Vendor agrees to remit to TIPS the required administration fee?

Yes

3
9

Yes - No

Additional discounts to TIPS members for bulk quantities or scope of work?

Yes

4
0

Years Experience

Company years of experience in this category of goods and services?

24

4
1

NON-COLLUSIVE BIDDING CERTIFICATE

By submission of this bid or proposal, the Bidder certifies that:

- 1) This bid or proposal has been independently arrived at without collusion with any other Bidder or with any Competitor;
- 2) 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;
- 3) 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;
- 4) 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.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered.

4 **CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ**

2

If you have a conflict of interest as described in this form or the Local Government Code Chapter 176, cited therein- you are required to complete and file with TIPS, Richard Powell, 4845 US Highway 271 North, Pittsburg, Texas 75686

You may find the Blank CIQ form on our website at:

Copy and Paste the following link into a new browser or tab:

<https://www.tips-usa.com/assets/documents/docs/CIQ.pdf>

Do you have any conflicts under this statutory requirement?

4 **Filing of Form CIQ**

3

If yes (above), have you filed a form CIQ as directed here?

4 **Regulatory Standing**

4

I certify to TIPS for the proposal attached that my company is in good standing with all governmental agencies Federal or state that regulate any part of our business operations. If not, please explain in the next attribute question.

4 **Regulatory Standing**

5

Regulatory Standing explanation of no answer.

4 **Antitrust Certification Statements (Tex. Government Code § 2155.005)**

6

By submission of this bid or proposal, the Bidder certifies that:

I affirm under penalty of perjury of the laws of the State of Texas that:

(1) I am duly authorized to execute this contract on my own behalf or on behalf of the company, corporation, firm, partnership or individual (Company) listed below;

(2) In connection with this bid, neither I nor any representative of the Company has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;

(3) In connection with this bid, neither I nor any representative of the Company has violated any federal antitrust law;

(4) Neither I nor any representative of the Company has directly or indirectly communicated any of the contents of this bid to a competitor of the Company or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Company.

Suspension or Debarment Instructions

Instructions for Certification:

1. By agreeing to the form, the prospective lower tier participant is providing the certification set out on the form in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participants," "person," "primary covered transaction," "principal," "proposal" and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.

4
8**Suspension or Debarment Certification**

Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

By submitting this offer and certifying this section, this bidder:

Certifies that no suspension or disbarment is in place, which would preclude receiving a federally funded contract as described above.

4
9**Non-Discrimination Statement and Certification**

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [How to File a Program Discrimination Complaint](#) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

(Title VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities)

USDA is an equal opportunity provider, employer, and lender.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. I certify that in the performance of a contract with TIPS or its members, that our company will conform to the foregoing anti-discrimination statement and comply with the cited law and regulations.

50

2 CFR PART 200 Contract Provisions Explanation

Required Federal contract provisions of Federal Regulations for Contracts for contracts with ESC Region 8 and TIPS Members:

The following provisions are required to be in place and agreed if the procurement is funded in any part with federal funds.

The ESC Region 8 and TIPS Members is the subgrantee or Subrecipient by definition. The federal Rule numbering or identification below is only for reference purpose on this form and does not identify an actual Federal designation or location of the rule. The Rules are located in 2 CFR PART 200 - Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards at 2 CFR PART 200.

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

51

2 CFR PART 200 (A) Contracts

Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Notice: Pursuant to Federal Rule (A) above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree?

Yes

52

2 CFR PART 200 (B) Termination

Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

Pursuant to Federal Rule (B) above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for cause after giving the vendor an appropriate opportunity and up to 30 days, to cure the causal breach of terms and conditions. ESC Region 8 and TIPS Members reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for convenience with 30 days notice in writing to the awarded vendor. The vendor would be compensated for work performed and goods procured as of the termination date if for convenience of the ESC Region 8 and TIPS Members. Any award under this procurement process is not exclusive and the ESC Region 8 and TIPS reserves the right to purchase goods and services from other vendors when it is in the best interest of the ESC Region 8 and TIPS.

Does vendor agree?

Yes

5
3**2 CFR PART 200 (G) Clean Air Act**

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to Federal Rule (G) above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires that the proposer certify that during the term of an award by the ESC Region 8 and TIPS Members resulting from this procurement process the vendor agrees to the terms listed and referenced therein.

Does vendor agree?

5
4**2 CFR PART 200 (H) Debarment and Suspension**

Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (H) above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that during the term of an award by the ESC Region 8 and TIPS Members resulting for this procurement process the vendor certifies that they are not debarred from receiving a contract from the federal government as provided therein.

Does vendor agree?

5
5**2 CFR PART 200 (I) Byrd Anti-Lobbying Amendment**

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to Federal Rule (I) above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that during the term and after the awarded term of an award by the ESC Region 8 and TIPS Members resulting for this procurement process the vendor certifies to the terms included or referenced therein.

Does vendor agree?

5
6**2 CFR PART 200 Federal Rule (12)**

Federal Rule (12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

Pursuant to Federal Rule (12) above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that in performance of the contracts, subcontracts, and subgrants of amounts in excess of \$100,000, the vendor will be in compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

Does vendor certify that it is in compliance with the Clean Air Act?

5
7**2 CFR PART 200 Procurement of Recovered Materials**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Does vendor certify that it is in compliance with the Solid Waste Disposal Act as described above?

5
8**Indemnification**

The ESC Region 8 and TIPS is a Texas Political Subdivision and a local governmental entity; therefore, is prohibited from indemnifying third parties pursuant to the Texas Constitution (Article 3, Section 52) except as specifically provided by law or as ordered by a court of competent jurisdiction. A provision in a contract to indemnify or hold a party harmless is a promise to pay for any expenses the indemnified party incurs, if a specified event occurs, such as breaching the terms of the contract or negligently performing duties under the contract. Article III, Section 49 of the Texas Constitution states that "no debt shall be created by or on behalf of the State ... " The Attorney General has counseled that a contractually imposed obligation of indemnity creates a "debt" in the constitutional sense. Tex. Att'y Gen. Op. No. MW-475 (1982). Contract clauses which require the System or institutions to indemnify must be deleted or qualified with "to the extent permitted by the Constitution and Laws of the State of Texas." Liquidated damages, attorney's fees, waiver of vendor's liability, and waiver of statutes of limitations clauses should also be deleted or qualified with "to the extent permitted by the Constitution and laws of State of Texas."

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms?

5
9

Remedies

The parties shall be entitled to exercise any right or remedy available to it either at law or in equity, subject to the choice of law, venue and service of process clauses limitations agreed herein. Nothing in this agreement shall commit the TIPS to an arbitration resolution of any disagreement under any circumstances. Any Claim arising out of or related to the Contract, except for those specifically waived under the terms of the Contract, may, after denial of the Board of Directors, be subject to mediation at the request of either party. Any issues not resolved hereunder must be referred to non-binding mediation to be conducted by a mutually agreed upon mediator as a prerequisite to the filing of any lawsuit over such issue(s). The parties shall share the mediator's fee and any associated filing fee equally. Mediation shall be held in Camp or Titus County, Texas. Agreements reached in mediation shall be reduced to writing, and will be subject to the approval by the District's Board of Directors, signed by the Parties if approved by the Board of Directors, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

Do you agree to these terms?

No

6
0

Remedies Explanation of No Answer

Request that the Dispute resolution process take place in Dallas, TX.

6
1

Choice of Law

This agreement and any addenda or other additions and all contracts or awards resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms?

Yes

6
2

Jurisdiction and Service of Process

Any Proceeding arising out of or relating to this procurement process or any contract issued by TIPS resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Camp County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world. Venue clauses in contracts with TIPS members may be determined by the parties.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms?

6
3

Alternative Dispute Resolution

Prior to filing of litigation, the parties may select non-binding mediation as a method of conflict resolution for issues arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction. The parties agree that if nonbinding mediation is chosen as a resolution process, the parties must agree to the chosen mediator(s) and that all mediation venue shall be at a location in Camp or Titus, County, Texas agreed by the parties. The parties agree to share equally the cost of the mediation process and venue cost.

Do you agree to these terms?

6
4

Alternative Dispute Resolution Explanation of No Answer

6
5

Infringement(s)

The successful vendor will be expected to indemnify and hold harmless the TIPS and its employees, officers, agents, representatives, contractors, assignees and designees from any and all third party claims and judgments involving infringement of patent, copyright, trade secrets, trade or service marks, and any other intellectual or intangible property rights in connection with the vendor's proposal or ultimate contracts awarded and approved.

Do you agree to these terms?

6
6

Infringement(s) Explanation of No Answer

6
7**Acts or Omissions**

The successful vendor will be expected to indemnify and hold harmless the TIPS, its officers, employees, agents, representatives, contractors, assignees and designees from and against any and all liability, actions, claims, demands or suits, and all related costs, attorney's fees and expenses arising out of, or resulting from any acts or omissions of the vendor or its agents, employees, subcontractors, or suppliers in the execution or performance of any agreements ultimately made by TIPS and the vendor.

Do you agree to these terms?

6
8**Acts or Omissions Explanation of No Answer**

Siemens requests that any obligation to indemnify TIPS be limited to the value of the engagement giving rise to the claim and further limited to the extent the liability, actions, claims, demands or suits arise out of the acts of TIPS, its officers, employees, agents, representatives, contractors, assignees and designees. Siemens requests that the phrase "agents, representatives, contractors, assignees and designees" be deleted from the its indemnity obligations.

6
9**Contract Governance**

Any contract made or entered into by the TIPS is subject to and is to be governed by Section 271.151 et seq, Tex Loc Gov't Code. Otherwise, TIPS does not waive its governmental immunities from suit or liability except to the extent expressly waived by other applicable laws in clear and unambiguous language.

7
0**Payment Terms and Funding Out Clause**

Payment Terms:

TIPS members pay net 30 or at point of sale and complies with the State of Texas payment law, Texas Government Code, Chapter 2251. See statute for specifics or consult your legal counsel. These are minimum terms required of the TIPS member in Texas by law and the parties may negotiate custom payment terms as desired provided they do not violate the statutory requirements. Statutory or binding regulations control TIPS members in this contract.

Funding out Clause:

Pursuant to Texas Local Government Code Sec. 271.903, any proposal offer accepted by TIPS and its members and all contracts to be approved are subject to the budgeting and appropriation of then currently available funds. See statute for specifics or consult your legal counsel.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms?

7 Insurance and Fingerprint Requirements Information

1

Insurance

If applicable and your staff will be on TIPS member premises for delivery, training or installation etc. and/or with an automobile, you must carry automobile insurance as required by law. You may be asked to provide proof of insurance.

Fingerprint

It is possible that a vendor may be subject to Chapter 22 of the Texas Education Code. The Texas Education Code, Chapter 22, Section 22.0834. Statutory language may be found at: <http://www.statutes.legis.state.tx.us/>

If the vendor has staff that meet both of these criterion:

- (1) will have continuing duties related to the contracted services; and
- (2) has or will have direct contact with students

Then you have "covered" employees for purposes of completing the attached form.

TIPS recommends all vendors consult their legal counsel for guidance in compliance with this law. If you have questions on how to comply, see below. If you have questions on compliance with this code section, contact the Texas Department of Public Safety Non-Criminal Justice Unit, Access and Dissemination Bureau, FAST-FACT at NCJU@txdps.state.tx.us and you should send an email identifying you as a contractor to a Texas Independent School District or ESC Region 8 and TIPS. Texas DPS phone number is (512) 424-2474.

See form in the next attribute to complete entitled:
Texas Education Code Chapter 22 Contractor Certification for Contractor Employees

7
2**Texas Education Code Chapter 22 Contractor Certification for Contractor Employees**

Introduction: Texas Education Code Chapter 22 requires entities that contract with school districts to provide services to obtain criminal history record information regarding covered employees. Contractors must certify to the district that they have complied. Covered employees with disqualifying criminal histories are prohibited from serving at a school district.

Definitions: Covered employees: Employees of a contractor or subcontractor who have or will have continuing duties related to the service to be performed at the District and have or will have direct contact with students. The District will be the final arbiter of what constitutes direct contact with students. Disqualifying criminal history: Any conviction or other criminal history information designated by the District, or one of the following offenses, if at the time of the offense, the victim was under 18 or enrolled in a public school:

(a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state.

I certify that:

NONE (Section A) of the employees of Contractor and any subcontractors are covered employees, as defined above. If this box is checked, I further certify that Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any subcontractor will not become covered employees. Contractor will maintain these precautions or conditions throughout the time the contracted services are provided.

OR

SOME (Section B) or all of the employees of Contractor and any subcontractor are covered employees. If this box is checked, I further certify that:

(1) Contractor has obtained all required criminal history record information regarding its covered employees. None of the covered employees has a disqualifying criminal history.

(2) If Contractor receives information that a covered employee subsequently has a reported criminal history, Contractor will immediately remove the covered employee from contract duties and notify the District in writing within 3 business days.

(3) Upon request, Contractor will provide the District with the name and any other requested information of covered employees so that the District may obtain criminal history record information on the covered employees.

(4) If the District objects to the assignment of a covered employee on the basis of the covered employee's criminal history record information, Contractor agrees to discontinue using that covered employee to provide services at the District.

Noncompliance or misrepresentation regarding this certification may be grounds for contract termination.

☐ None

7
3**Solicitation Deviation/Compliance**

Does the vendor agree with the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation?

☐ No

7
4

Solicitation Exceptions/Deviations Explanation

If the bidder intends to deviate from the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation, all such deviations must be listed on this attribute, with complete and detailed conditions and information included or attached.

TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any bid based upon any deviations indicated below or in any attachments or inclusions.

In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Standard Terms and Conditions, Item Specifications, and all other information contained in this Solicitation.

- 1) TIPS may not use Siemens logo, name or any mark owned by Siemens without the prior written consent of Siemens.
- 2) Audit right of TIPS shall be on 60 days prior written notice, occur at Siemens office, be expressly limited to orders secured by Siemens pursuant to the TIPS procurement process;
- 3) Siemens shall only be required to pay the TIPS administration fee upon project completion and receipt of all monies due Siemens under the project agreement;
- 4) shipping charges to be billed at Siemens standard rates, FOB Siemens warehouse;
- 5) Siemens shall warrant its work for a period of one (1) year. Siemens shall not have warranty responsibility for any repairs caused by negligent repair/maintenance, failure to follow manufacturer specifications or negligence and accident. Siemens shall not warrant any 3rd party equipment but shall assign all 3rd party manufacturer warranties.
- 6) Siemens may assign this agreement to any subsidiary of Siemens AG.
- 7) payments - all payment shall be made to Siemens as set forth in the project agreement.
- 8) Siemens indemnity obligation

7
5

Agreement Deviation/Compliance

Does the vendor agree with the language in the Vendor Agreement?

No

Agreement Exceptions/Deviations Explanation

If the proposing Vendor desires to deviate from the Vendor Agreement language, all such deviations must be listed on this attribute, with complete and detailed conditions and information included or attached. TIPS will consider any deviations in its proposal award decisions, and the TIPS reserves the right to accept or reject any proposal based upon any deviations indicated below or in any attachments or inclusions.

In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Vendor Agreement.

ADDENDUM TO TIPS VENDOR AGREEMENT

This addendum to the Texas Interlocal Purchasing System (TIPS) Vendor Agreement is entered into this ____ day of _____, 2020 by Siemens Industry, Inc., a Delaware corporation and TIPS. Defined terms in the Vendor Agreement shall have the same meaning herein. In the event of conflict between the terms of this Addendum and the Vendor Agreement, this Addendum shall control.

- 1) TIPS represents and warrants to Vendor that this Request for Qualifications expressly complies with the statutory procurement requirements found in Texas Statutes, Local Government in Texas Local Government Code § 302 in and Public Schools in Texas Education Code § 44.901.
- 2) Marketing - TIPS may not use Siemens logo, name or any mark owned by Siemens without the prior written consent of Siemens.
- 3) Audit - Audit right of TIPS shall be on 60 days prior written notice, occur at Siemens office, occur at the sole expense of TIPS and be expressly limited to orders secured by Siemens pursuant to the TIPS procurement process;
- 4) Compensation - Siemens shall only be required to pay the TIPS administration fee upon project completion and receipt of all monies due Siemens under the project agreement;
- 5) Shipping - shipping charges to be billed at Siemens standard rates, FOB Siemens warehouse;
- 6) Warranty - Siemens shall warrant its work for a period of one (1) year. Siemens shall not have warranty responsibility for any repairs caused by negligent repair/maintenance, failure to follow manufacturer specifications or negligence and accident. Siemens shall not warrant any 3rd party equipment but shall assign all 3rd party manufacturer warranties.
- 7) Assignment - Siemens may assign this agreement to any subsidiary of Siemens AG.
- 8) Payments - all payment shall be made to Siemens as set forth in the project agreement.
- 9) Siemens indemnity obligation to TIPS shall not exceed the value of the project giving rise to the claim and Siemens shall have no obligation to indemnify TIPS to the extent that the indemnity claim arose out of the acts or omissions of TIPS, its agents, contractors, employees, officers, or members. Notwithstanding anything to the contrary in this Vendor Agreement, Siemens liability to TIPS for all claims, losses and damages shall not exceed the value of the project giving rise to the claim. SIEMENS IS NOT LIABLE, UNDER ANY LEGAL OR EQUITABLE THEORY FOR: LOSS OF USE, REVENUE, SAVINGS, PROFIT, INTEREST, OR FOR ANY TYPE OF INDIRECT, SPECIAL, LIQUIDATED, PUNITIVE, EXEMPLARY, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.
- 10) Siemens shall have no obligation to notify TIPS of change orders or compensate TIPS 1% of any change order value.
- 11) In the event of a conflict between the Supplemental Agreement and this Vendor Agreement, the Supplemental Agreement shall control.
- 12) The third paragraph of the "Statutory Requirements" section of the Terms and Conditions is modified as follows:
 - a. You certify that your company is not on a list prepared and maintained under 2252.153 of companies that do business with The Texas Comptroller of Public Accounts list of Designated Foreign Terrorist Organizations per Texas Government Code Section 2270.0153 found at: <https://www.comptroller.texas.gov/purchasing/docs/foreign-terrorist.pdf>.

TIPS RFQ 200209 Energy Savings Performance Contracts**REFERENCES**

Please provide three (3) references, preferably from school districts or other governmental entities who have used your services within the last three years. Additional references may be required. DO NOT INCLUDE TIPS EMPLOYEES AS A REFERENCE.

You may provide more than three (3) references.

Entity Name	Contact Person	Email	Phone
Little Elm ISD	Rod Reeves	rreeves@leisd.ws	940-594-3947
White Settlement ISD	David Bitters	dbitters@wsisd.net	817-367-5305
Stephen F. Austin University	Allen Singleton	ajsingleton@sfasu.edu	936-468-4546

CERTIFICATION BY CORPORATE OFFERER

IF OFFERER IS A CORPORATION,

THE FOLLOWING CERTIFICATE SHOULD BE EXECUTED AND INCLUDED AS PART OF PROPOSAL FORM/PROPOSAL FORM.

OFFERER: Siemens Industry, Inc.
(Name of Corporation)

I, certify that I am the Secretary of (see attached signature authorization)
(Name of Corporate Secretary)

the Corporation named as OFFERER herein above; that

John Kovach
(Name of person who completed proposal document)

who signed the foregoing proposal on behalf of the corporation offerer is the authorized person that is acting as

EPS Vice President
(Title/Position of person signing proposal/offer document within the corporation)

of the said Corporation; that said proposal/offer was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

CORPORATE SEAL

SIGNATURE

(see attached signature authorization)

DATE

Required Confidential Information Status Form

CONFIDENTIAL INFORMATION SUBMITTED IN RESPONSE TO COMPETITIVE PROCUREMENT REQUESTS OF EDUCATION SERVICE CENTER REGION 8 AND TIPS (ESC8) IS GOVERNED BY TEXAS GOVERNMENT CODE, CHAPTER 552

If you consider any portion of your proposal to be confidential information and not subject to public disclosure pursuant to Chapter 552 Texas Gov't Code or other law(s), you **must attach a copy of all claimed confidential materials within your proposal and put this COMPLETED form as a cover sheet to said materials then scan, name "CONFIDENTIAL" and upload with your proposal submission.** (You must include all the confidential information in the submitted proposal. The copy uploaded is to indicate which material in your proposal, if any, you deem confidential in the event the receives a Public Information Request.) ESC8 and 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. Upon your claim and your defense to the Office of Texas Attorney General is required to make the final determination whether the information submitted by you and held by ESC8 and TIPS is confidential and exempt from public disclosure.

Siemens Industry, Inc.

Name of company

John Kovach, EPS Vice President

Printed Name and Title of authorized company officer declaring below the confidential status of material

8600 North Royal Lane Irving TX 75063 214-803-7392

Address City State ZIP Phone

ALL VENDORS MUST COMPLETE THE ABOVE SECTION.

I DO CLAIM parts of my proposal to be confidential and DO NOT desire to expressly waive a claim of confidentiality of all information contained within our response to the solicitation. The attached contains material from our proposal that I classify and deem confidential under Texas Gov't Code Sec. 552 or other law(s) and I invoke my statutory rights to confidential treatment of the enclosed materials.

ATTACHED ARE COPIES OF _____ PAGES OF CLAIMED CONFIDENTIAL MATERIAL FROM OUR PROPOSAL THAT WE DEEM TO BE NOT PUBLIC INFORMATION AND WILL DEFEND THAT CLAIM TO THE TEXAS ATTORNEY GENERAL IF REQUESTED WHEN A PUBLIC INFORMATION REQUEST IS MADE FOR OUR PROPOSAL.

Signature _____ Date _____

OR -----

I DO NOT CLAIM any of my proposal to be confidential, complete the section below.

Express Waiver: I desire to expressly waive any claim of confidentiality as to any and all information contained within our response to the competitive procurement process (e.g. RFP, CSP, Bid, RFQ, etc.) by completing the following and submitting this sheet with our response to Education Service Center Region 8 and TIPS.

Signature _____ Date 3/24/2020

SIGN HERE

FELONY CONVICTION NOTICE

Statutory citation covering notification of criminal history of contractor is found in the Texas Education Code #44.034. Following is an example of a felony conviction notice:

State of Texas Legislative Senate Bill No. 1, Section 44.034, Notification of Criminal History, Subsection (a), states “a person or business entity that enters into a contract with a school district or ESC 8/TIPS must give advance notice to the district or ESC 8/TIPS 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

Complete only one of the three below: A or B or C.

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

Official: **John Kovach, EPS Vice President**

Print Authorized Company Official's Name

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

Signature of Authorized Company Official: _____

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

Signature of Authorized Company Official: _____

SIGN HERE

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

Name of Felon(s): _____

Details of Conviction(s): _____

Signature of Authorized Company Official: _____

Federal Requirements for Procurement and Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

The TIPS members anticipate possibly using federal funds for procurement under this potential award and is required to obtain the following compliance assurance.

1. Will you be subcontracting any of your work under this award if you are successful? (Circle one)

☒ YES or NO ☐

2. If yes, do you agree to comply with the following federal requirements? (Circle one)

☒ YES or NO ☐

2 CFR §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

Company Name Siemens Industry, Inc.

Print name of authorized representative John Kovach, EPS Vice President

Signature of authorized representative 

Date 3/24/2020

**ACKNOWLEDGEMENT OF
APPOINTED SIGNATURE AUTHORITY FROM
PRESIDENT DAVID HOPPING
AND VICE PRESIDENT FINANCE & BUSINESS ADMINISTRATION PETER KAMPS**

**SIEMENS INDUSTRY, INC. – SMART INFRASTRUCTURE – REGIONAL SOLUTIONS AND
SERVICES**

- A. We, the undersigned, David Hopping, President, and Peter Kamps, Vice President Finance & Business Administration, of Siemens Industry, Inc. - Smart Infrastructure (the "Corporation") a corporation duly organized and existing under the laws of the State of Delaware, by virtue of the authority vested by the Board of Director's of Siemens Industry, Inc. and in accordance with the By-Laws of the Corporation and the laws of said State, do hereby acknowledge that the following individuals are hereby authorized to sign or countersign and otherwise execute in the name, or on behalf of Siemens Industry Inc.- Smart Infrastructure, any bids, proposals, bonds, releases and waivers of liens, and any certificates, affidavits, or ancillary documents in connection therewith; any licensing qualification or registration filings, returns, certifications or questionnaires; any contracts, leases, agreements, guarantees and any certificates, affidavits, or ancillary documents in connection therewith, up to and including a transactional limit of \$5,000,000; and any releases, compromises or settlements in connection with claims or disputes arising out of any such transaction.

AUTHORIZED SIGNATORIES	
Field Sales and Operations	
<u>Business Operations</u> <u>(Name/Position)</u>	<u>Finance/Central Support Function</u> <u>(Name/Position)</u>
Dana Soukup, Sr. Vice President Field Operations	Peter Kamps, Vice President, Finance and Business Administration

- B. We, the undersigned, David Hopping, President, and Peter Kamps, Vice President Finance & Business Administration, of Siemens Industry, Inc. - Smart Infrastructure (the "Corporation") a corporation duly organized and existing under the laws of the State of Delaware, by virtue of the authority vested by the Board of Director's of Siemens Industry, Inc. and in accordance with the By-Laws of the Corporation and the laws of said State, do hereby acknowledge that the following individuals are hereby authorized to sign or countersign and otherwise execute in the name, or on behalf of Siemens Industry, Inc. – Smart Infrastructure, any bids, proposals, bonds, releases and waivers of liens, and any certificates, affidavits, or ancillary documents in connection therewith; any licensing qualification or registration filings, returns, certifications or questionnaires; any contracts, leases, agreements, guarantees and any certificates, affidavits, or ancillary documents in connection therewith, up to and including a transactional limit of \$1,000,000; and any releases, compromises or settlements in connection with claims or disputes arising out of any such transaction.

AUTHORIZED SIGNATORIES	
Solutions and Service Portfolio (SSP)	
<u>Business Operations</u> <u>(Name/Position)</u>	<u>Finance/Central Support Function</u> <u>(Name/Position)</u>
Brad Haeberle, Vice President SSP	David Galla, Vice President Finance and Business Administration, SSP

- C. We, the undersigned, David Hopping, President, and Peter Kamps, Vice President Finance & Business Administration, of Siemens Industry, Inc. – Smart Infrastructure (the "Corporation") a corporation duly organized and existing under the laws of the State of Delaware, by virtue of the authority vested by the Board of Directors of Siemens Industry, Inc. and in accordance with the By-Laws of the Corporation and the laws of said State, do hereby acknowledge that the following individuals are hereby authorized to sign or countersign and otherwise execute in the name, or on behalf of Siemens Industry Inc. – Smart Infrastructure, any bids, proposals, bonds, releases and waivers of liens, and any certificates, affidavits, or ancillary documents in connection therewith; any licensing qualification or registration filings, returns, certifications or questionnaires; any contracts, leases, agreements, guarantees and any certificates, affidavits, or ancillary documents in connection therewith, up to and including a transactional limit of \$100,000; and any releases, compromises or settlements in connection with claims or disputes arising out of any such transaction.

<u>AUTHORIZED SIGNATORIES</u> <u>Sales and Business Excellence</u>	
<u>Business Operations</u> <u>(Name/Position)</u>	<u>Finance/Central Support Function</u> <u>(Name/Position)</u>
Rich Cillessen, Sr. Director Sales Excellence	Jola Sokolowski, Senior Director Finance Excellence
Tom Strollo, Sr. Director Business Excellence	Jola Sokolowski, Senior Director Finance Excellence

- D. We, the undersigned, David Hopping, President, and Peter Kamps, Vice President Finance & Business Administration, of Siemens Industry, Inc. – Smart Infrastructure (the "Corporation") a corporation duly organized and existing under the laws of the State of Delaware, by virtue of the authority vested by the Board of Directors of Siemens Industry, Inc. and in accordance with the By-Laws of the Corporation and the laws of said State, do hereby acknowledge that the following individuals are hereby authorized to sign or countersign and otherwise execute in the name, or on behalf of Siemens Industry Inc. – Smart Infrastructure, any bids, proposals, bonds, releases and waivers of liens, and any certificates, affidavits, or ancillary documents in connection therewith; any licensing qualification or registration filings, returns, certifications or questionnaires; any contracts, leases, agreements, guarantees and any certificates, affidavits, or ancillary documents in connection therewith, up to and including a transactional limit of \$3,000,000; and any releases, compromises or settlements in connection with claims or disputes arising out of any such transaction.

<u>AUTHORIZED SIGNATORIES</u>	
<u>Field</u>	
<u>Business Operations</u> <u>(Name/Position)</u>	<u>Finance/Central Support Function</u> <u>(Name/Position)</u>
Eric Ackermann, Pacific Zone Vice President	Dirk Glaser, Pacific Zone Finance and Business Administration
Craig Banaszewski, Southwest Zone Vice President	Brett Gora, Southwest Zone Finance and Business Administration
Joe Zydorowicz, Midwest Zone Vice President	Kai Hagen, Midwest Zone Finance and Business Administration
Scott Brady, Southeast Zone Vice President	Alcindor Shaw, Southeast Zone Finance and Business Administration
Bob Suermann, Atlantic Zone Vice President	Carol Young, Atlantic Zone Finance and Business Administration

Joe Peters, Northeast Zone Vice President	Jim Gerlach, Northeast Zone Finance and Business Administration
Mike Kearney, Enterprise Zone Vice President	Vic Pearcy, Enterprise Zone Finance and Business Administration

- E. We, the undersigned, David Hopping, President, and Peter Kamps, Vice President Finance & Business Administration, of Siemens Industry, Inc. – Smart Infrastructure (the “Corporation”) a corporation duly organized and existing under the laws of the State of Delaware, by virtue of the authority vested by the Board of Director’s of Siemens Industry, Inc. and in accordance with the By-Laws of the Corporation and the laws of said State, do hereby acknowledge that the following individuals are hereby authorized to sign or countersign and otherwise execute in the name, or on behalf of Siemens Industry Inc. – Smart Infrastructure, any bids, proposals, bonds, releases and waivers of liens, and any certificates, affidavits, or ancillary documents in connection therewith; any licensing qualification or registration filings, returns, certifications or questionnaires; any contracts, leases, agreements, guarantees and any certificates, affidavits, or ancillary documents in connection therewith, up to and including a transactional limit of \$3,000,000; and any releases, compromises or settlements in connection with claims or disputes arising out of any such transaction.

<u>AUTHORIZED SIGNATORIES</u> <u>Energy Performance Services (EPS)</u>	
<u>Business Operations</u> <u>(Name/Position)</u>	<u>Finance/Central Support Function</u> <u>(Name/Position)</u>
John Kovach, EPS Vice President	Bob Kelly, EPS Finance and Business Administration

- F. We, the undersigned, David Hopping, President, and Peter Kamps, Vice President Finance & Business Administration, of Siemens Industry, Inc. – Smart Infrastructure (the “Corporation”) a corporation duly organized and existing under the laws of the State of Delaware, by virtue of the authority vested by the Board of Director’s of Siemens Industry, Inc. and in accordance with the By-Laws of the Corporation and the laws of said State, do hereby acknowledge that the following individuals are hereby authorized to sign or countersign and otherwise execute in the name, or on behalf of Siemens Industry, Inc. – Smart Infrastructure, any bids, proposals, bonds, releases and waivers of liens, and any certificates, affidavits, or ancillary documents in connection therewith; any licensing qualification or registration filings, returns, certifications or questionnaires; any contracts, leases, agreements, guarantees and any certificates, affidavits, or ancillary documents in connection therewith, up to and including a transactional limit of \$5,000,000; and any releases, compromises or settlements in connection with claims or disputes arising out of any such transaction.

<u>AUTHORIZED SIGNATORIES</u> <u>Procurement</u>
<u>Finance/Central Support Function (Name/Position)</u>
Carl Oberland, Vice President Procurement

- G. We further acknowledge that each of the signatures of the persons referred to in paragraph A, B, C, D, E and F are binding upon the Corporation.
- H. We further acknowledge that any document shall require the signature of two (2) of the above Authorized Signatories, one each from Business Operations and from Finance/Central Support Functions, whom shall have the requisite signature authority to be legally binding upon the Corporation.
- I. We further acknowledge that each of the persons referred to herein is authorized to delegate such person's authority hereunder to additional members of his or her management team up to the limit of such person's delegation of authority, provided that such delegation is in written form signed by the delegator and filed with the Legal Department.
- J. We further acknowledge that the Secretary or an Assistant Secretary of the Corporation is authorized to issue certifications attesting to the incumbency, authority and status of any of the persons referred to in this resolution.

IN WITNESS WHEREOF, we have hereunto subscribed our names and affixed the corporate seal of the said Corporation, as of the 1st day of October, 2019





David Hopping
President
Siemens Industry, Inc.
Smart Infrastructure



Peter Kamps
Vice President, Finance and Business Administration
Siemens Industry, Inc.
Smart Infrastructure