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*Responding vendors must read all sections of this Proposal Invitation carefully.  
Even if your company has submitted proposals on previous BuyBoard proposal invitations, terms and requirements may have changed.*

## **NOTICE OF PROPOSAL INVITATION**

The Local Government Purchasing Cooperative d/b/a BuyBoard® (Cooperative), 12007 Research Blvd., Austin, Texas 78759 is a statewide purchasing cooperative for school districts, junior colleges, cities, counties, and other political subdivisions. The Texas Association of School Boards, Inc. (TASB), a Texas nonprofit corporation, 12007 Research Blvd., Austin, Texas 78759, serves as the Cooperative's administrator. The Cooperative is endorsed by TASB, the Texas Municipal League (TML), a Texas unincorporated nonprofit association, 1821 Rutherford Lane, Austin, Texas 78754, and the Texas Association of Counties (TAC), a Texas nonprofit association, 1204 San Antonio, Austin, Texas 78701.

The Cooperative's contracts for commodities and services are available to the members of TASB, TML, and TAC, and other local governmental entities that are members of the Cooperative and eligible to purchase through a government purchasing cooperative or interlocal contract. TASB, the Cooperative administrator, provides an online marketplace to the Cooperative known as the BuyBoard which enables members to review available contracts and make purchases of awarded commodities and services electronically.

The Cooperative is soliciting sealed proposals for products, supplies, services and/or equipment as set forth in this Proposal Invitation on behalf of all present and future members of the Cooperative. There may be over 1,000 Texas public school districts and junior colleges, over 900 municipalities, 400 counties, and numerous other political subdivisions (i.e. river authorities, special districts, public housing authorities, etc.) participating in the Cooperative at any given time. Awarded products and services may also be available to the administrator's nonprofit entity BuyBoard subscribers and, in the event of a piggyback award, members of the National Purchasing Cooperative located throughout the United States as further explained in the Proposal Invitation.

Completed sealed proposals for **Proposal No. 681-22 for Job Order Contracting for Energy Conservation and Efficiency must be received on or before 4:00 PM August 18, 2022**, either by submitting the Proposal electronically through the Cooperative's designated website or by hard copy submission as set out in the Instructions to Proposers. **Late proposals will not be accepted.**

**Unless a different time period is stated in the General Information document for this Proposal Invitation, questions, requests for information or clarification, or comments regarding this Proposal Invitation, including the specifications, must be submitted in writing, addressed as indicated below, and received by the Cooperative administrator no later than the 10<sup>th</sup> business day before the Proposal Due Date. The Cooperative will respond only to written questions.**

The Local Government Purchasing Cooperative  
Attn: TASB Asst. Division Director, Cooperative Procurement  
12007 Research Blvd.  
Austin, TX 78759  
E-Mail: [bids@buyboard.com](mailto:bids@buyboard.com)



## PROPOSAL INVITATION No. 681-22

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## **INSTRUCTIONS TO PROPOSERS**

### **Electronic Proposal Submission**

The Cooperative requests that Vendors submit Proposals electronically in accordance with the instructions herein via the link available on the following website:

- [buyboard.com/vendor](http://buyboard.com/vendor)

There is no cost to the Vendor to register or use the electronic proposal submission option. To the extent a vendor is unable to submit a Proposal electronically through the proposal website, instructions for hard copy submissions are provided below.

### ***Before you submit***

- In order to submit a Proposal electronically, you must have a working registered vendor username and password to login. If you do not have a registered vendor username and password, you may obtain one by registering at [buyboard.com/vendor](http://buyboard.com/vendor). ***Note to existing BuyBoard vendors: The registered vendor login used for electronic proposal submission is NOT the same as your existing login used to check purchase orders or similar vendor information under awarded contracts.*** Vendors are highly encouraged to ensure you have a working vendor login well in advance of the submission deadline.
- Vendor is responsible for ensuring it has the technical capability to submit its Proposal via electronic submission.
- Browser requirements can be found at <https://buyboard.ionwave.net/BrowserCompatibility.html>.
- **VENDOR SHALL BE SOLELY RESPONSIBLE FOR ENSURING TIMELY SUBMISSION OF VENDOR'S PROPOSAL.** Neither the Cooperative nor the Cooperative administrator shall be responsible for equipment or software failure, internet or website downtime, corrupt or unreadable data, or other technical issues that may cause delay or non-delivery of a Proposal or inaccessibility of the submitted data. Accordingly, Vendors are highly encouraged to prepare and allow for sufficient time to familiarize itself with the electronic submission requirements and to address any technical or data issues prior to the Proposal Due Date.

### ***How to submit Proposal electronically***

- Login using your registered vendor login at [buyboard.com/vendor](http://buyboard.com/vendor) under the "Register/Login/Submit Proposal" link.
- The page will open to the list of "Available Bids."
- Click on the applicable Proposal Invitation number under the "My Invitations" or "Other Bid Opportunities" section to view this Proposal Invitation request.
- ***Review and follow all instructions on the webpage.***
- **VENDOR INFORMATION** – Select the "Attributes" tab to locate the Vendor Contact Information fields required to be completed and submitted.
  - Vendors must respond to each item by providing the information requested. **If you fail to complete any of the line items, you will receive an error and will be unable to submit your Proposal.**
- **PROPOSAL SPECIFICATIONS** – Select the "Line Items" tab to locate the Proposal Specifications.
  - Input all required proposal pricing information (coefficient) as specified.



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- Vendors must respond to each line item by either providing the information requested in the specifications, adding alternates to provide additional information (as necessary), or by indicating no bid. **If you fail to complete any of the line items, you will receive an error and will be unable to submit your Proposal.**
- **PROPOSAL DOCUMENTS** - To upload your Proposal documents, select the "Response Attachments" tab and upload a *signed, complete* copy of your Proposal in *searchable PDF format*, including all required proposal documents (Proposal Forms, and any other documents required by the Proposal Invitation).
- **PROPOSAL SUBMISSION** - Select the "Response Submission" tab to submit the Proposal.
  - If an error or multiple errors occur, the system will display the location of the error(s).
  - Go to the problem area and correct the errors. You must go to the specific tab(s) that contain(s) the error(s) to review the error detail and correct the error(s). ***Your submission will not be submitted until all errors are corrected.***
  - Once all errors are corrected, proceed to the "Response Submission" tab to submit the response.

***How to submit hard copy Proposal – Paper copies will NOT be accepted***

While the Cooperative requests electronic submission of Proposals through the designated website, any Vendor without the technical capability or wishing to submit a hard copy Proposal may do so in accordance with the following instructions:

- Contact BuyBoard staff at [bids@buyboard.com](mailto:bids@buyboard.com) to request a copy of the Proposal Specification Form and other forms not included in this packet in hard copy form **at least five (5) business days prior to the Proposal Due Date.**
- Submit the signed, completed Proposal in a sealed envelope or carton properly marked with the Proposal Invitation number and Proposal submittal date and time and containing all required proposal documents (including forms, completed Proposal Specification Form, and any other documents required by the Proposal Invitation). The Proposal must be submitted in ***electronic, searchable PDF format on a USB flash drive, CD or DVD. Paper copies will NOT be accepted.***
- **The Proposal Specification Form must be submitted with the Proposal in the format required by these Instructions to Proposers or it will not be considered.**
- Any hard copy electronic Proposals must be delivered via hand delivery or U.S. Mail to the address below so as to be received on or before the Proposal Due Date and time:

The Local Government Purchasing Cooperative  
12007 Research Blvd.  
Austin, TX 78759

**VENDOR SHALL BE SOLELY RESPONSIBLE FOR ENSURING TIMELY SUBMISSION OF VENDOR'S PROPOSAL.** Neither the Cooperative nor the Cooperative administrator shall be responsible for Proposals delivered late by the United States Postal Service or any other delivery or courier service. Further, neither the Cooperative nor the Cooperative administrator shall be responsible for Proposals delivered in a corrupt or unreadable electronic format.

***Faxed and/or emailed Proposals will NOT be accepted.***

**WITHDRAWAL OR MODIFICATION OF PROPOSALS**

Proposals may be withdrawn or modified prior to the Proposal Due Date and time, but only in accordance with section B.11 (Withdrawal or Modification of Proposal) of the General Terms and Conditions in this Proposal Invitation.



## GENERAL INFORMATION

### Proposal Invitation No. 681-22 – Job Order Contracting for Energy Conservation and Efficiency

***\*Please make sure that you have reviewed and completed all sections of this Proposal Invitation.***

1. Notice of Proposal Invitation and Instructions to Proposers
2. General Information
3. Proposal Forms
4. Proposal Specifications
5. Program Requirements for Job Order Contracting
6. General Terms and Conditions
7. Additional Terms and Conditions for BuyBoard Self-Reporting

### PROPOSAL SUBMISSION INSTRUCTIONS

Proposal responses (including completed and signed Proposal Invitation forms and completed Proposal specifications) must be submitted in electronic format in the manner prescribed in the Instructions to Proposers.

### INTENT AND PURPOSE OF THE CONTRACT

The intent of this Proposal Invitation is to establish a contract with highly qualified Vendor(s) for Job Order Contracting Services for Energy Conservation and Efficiency that may be used by Cooperative members. Because individual members require different equipment, supplies, and/or services, this Proposal Invitation is a request for Proposers to provide Proposer's Coefficients (as defined in this Proposal Invitation) to be applied to the Unit Price Book (defined in this Proposal Invitation as the Gordian Facilities Construction Costs Data Book with RSMMeans Data). Included in this Proposal Invitation are Program Requirements which further set forth the purpose and requirements of the contract. Purchases can be made by a Cooperative member at any time during the contract term.

***As set forth below and in the Proposal Invitation, the scope of services is limited to general job order contracting services focused on improving energy efficiency and conservation for facilities. This Proposal Invitation is not for, and no awarded contract hereunder shall be deemed to be, an Energy Savings Performance Contract as defined and governed by Texas Education Code §44.901, Texas Local Government Code Chapter 302, or similar laws and/or to include services that are required to be procured under the Professional Services Procurement Act (Chapter 2254 of the Texas Government Code) including, without limitation, architecture and professional engineering services.***

All energy conservation and efficiency job order contracting services performed under an awarded Contract **shall be limited** to the following areas (including incidental, related services) and the related Unit Price sections in the Unit Price Book identified in the Proposal Specifications:

1. Automatic energy control systems, including related software; that are intended for energy efficiency and conservation; and
2. Heating, ventilating, or air-conditioning system modifications or replacements that are intended for the reduction of energy or water consumption; and
3. Insulation of a building structure and systems within the building; that are intended for energy efficiency and conservation; and
4. Lighting fixtures and lighting upgrades that are intended for the increase in energy efficiency; and



5. Storm windows or doors, caulking or weather stripping, multi-glazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, or other window or door system modifications that are intended for the reduction of energy consumption; and
6. Water-conserving fixtures, appliances, and equipment or the substitution of non-water using fixtures, appliances, and equipment that are intended for the reduction of energy or water consumption; and
7. Other services which are incidental, related services to items 1-6.

Please note that roofing system upgrades and replacements are **not** included within the scope of this Proposal Invitation or any resulting Contract. Core work under the Contract shall be limited to the sections listed in this proposal Invitation and found in the Gordian Facilities Construction Cost Data Book with RSMeans Data. Other tasks shall be permitted only when incidental/related to the core work.

Proposers responding to this Proposal Invitation shall have a **minimum history of five years project experience** successfully completing energy conservation and efficiency projects for Texas or other governmental entities. As required by the Proposal Invitation Questionnaire, Vendors shall submit references and direct experience (not as a subcontractor) performing the work proposed under this Proposal Invitation.

#### **TERM OF CONTRACT**

The term of this contract will be from December 1, 2022, through November 30, 2024, with three possible one-year renewals.

As set forth in the General Terms and Conditions, an awarded Vendor has no right to or vested interest in contract renewal. The determination as to whether to renew or non-renew any Vendor Contract, in whole or in part, shall be in the sole discretion of the Cooperative.

**For purposes of this Proposal Invitation, a Vendor must generate a minimum of \$15,000 through the Contract during an annual contract term or may not be offered a renewal.** A Vendor's failure to generate this minimum amount may also be considered by the Cooperative as part of Vendor's past performance evaluation on future proposal invitations.

#### **VALUE OF CONTRACT**

The estimated value of this contract is unknown since a contract for Job Order Contracting for Energy Conservation and Efficiency has not been offered on the BuyBoard previously and a contract award is not a guaranty, of any value. Usage will depend upon Cooperative members' actual needs and available funding.

#### **TYPE OF CONTRACT; COEFFICIENTS**

This is a "sealed proposal" based on Proposer's Coefficients (as defined in this Proposal Invitation) to be applied to the Unit Price Book (as defined in this Proposal Invitation). Vendor shall hold its awarded coefficients firm during the contract term. In the event of price decreases, such price decreases shall be allowed for all products.

A coefficient proposed should be the price multiplier that vendor proposes to be applied to the Unit Price Book(s) identified in the Proposal specifications. Coefficients shall be "net" (e.g. 1.0) or a percentage "decrease from" (e.g. 0.95) or "increase from" (e.g. 1.21) the unit prices listed in the Unit Price Book. Coefficient factors are to be carried no further than two (2) decimal places.



## **SERVICE FEE**

An awarded Vendor under this Proposal Invitation must pay the Cooperative a service fee in the amount of 2% per Purchase Order generated from any contract awarded under this Proposal Invitation, and the service fee is to be included in the Awarded Pricing. Vendor agrees to pay this service fee and remit the fee to the Cooperative in Austin, Texas, promptly upon payment by the Cooperative member for any Purchase Order(s) and within 30 days of the date of each service fee invoice. As set forth in more detail in the General Terms and Conditions, an awarded Vendor will be required to provide the Cooperative with copies and/or reports of all Purchase Orders generated from Vendor's Contract(s) that Vendor receives directly from Cooperative members, Vendor Invoices, and/or such other documentation regarding Cooperative member purchases under any awarded Contract as the Cooperative Administrator may require in its reasonable discretion. The Cooperative shall have the right, upon reasonable written notice, to review records of awarded Vendors pertaining to purchases under any awarded Contract to verify purchase activity under the Contract, the accuracy of service fees payable by Vendor, or as otherwise reasonably necessary for the administration of the Contract or when required by law.

## **CONFIDENTIAL INFORMATION**

Any information submitted by Proposer that Proposer considers to be confidential must be clearly identified as such on the Confidential/Proprietary Information Form.

## **AWARD AND EVALUATION**

All information required by this Proposal Invitation must be submitted with the Proposal or your Proposal will be deemed nonresponsive. Responsive Proposals will be evaluated, and any Contracts will be awarded based on the evaluation and award criteria as set out in Section C.2 of the General Terms and Conditions determined to provide best value to Cooperative members.

## **COMPLIANCE WITH APPLICABLE LAWS**

By submitting a Proposal, the Proposer certifies that Proposer has provided its valid, proper and correct business entity name and information in its Proposal, that such entity is operating in good standing with the proper authority from whatever state or local jurisdiction is required, and Proposer has obtained, and, if awarded, will continue to maintain during the entire term of this Contract, all permits, approvals, and/or licenses necessary for lawful performance of its obligations under this Contract. Proposer further certifies that, if awarded, Proposer will comply with all applicable state, federal, and local laws, rules, and regulations in regard to awarded products and/or services.

## **BUYBOARD WEBSITE**

Information on awarded Contracts, including awarded products and services under this Proposal Invitation, will be available to Cooperative members on the online marketplace platform utilized by the Cooperative: the BuyBoard. To improve and enhance the experience of Cooperative members seeking to procure goods and services, the Cooperative may, in its sole discretion, provide Vendors with an opportunity to have Vendor's logo, product images, and similar brand and trademark information included in the BuyBoard online marketplace in relation to Awarded Items. Vendors shall review the BuyBoard Vendor Consent for Name Brand Use included with the Proposal Forms in this Proposal Invitation.

## **BUYBOARD ADVISORY REGARDING CONSTRUCTION-RELATED GOODS AND SERVICES**

The Cooperative issued the BuyBoard Procurement and Construction-Related Goods and Services Advisory for Texas Members, which provides information specifically relevant to the procurement of construction-related goods and services by Texas Cooperative members. The advisory is available at <https://www.buyboard.com/Vendor/Resources.aspx>.





An awarded Vendor that sells construction-related goods or services to a Cooperative member under a Contract awarded pursuant to this Proposal Invitation must provide the Cooperative member with a copy of the Advisory before executing a Member Construction Contract (as defined in the General Terms and Conditions associated with this Proposal Invitation) or accepting the Cooperative member's Purchase Order for construction-related goods or services, whichever comes first. By the Construction Related Goods and Services Affirmation form in the Proposal Forms, Proposer agrees that, if awarded a Contract, Proposer will comply with this and other Advisory requirements in connection with the sale of construction-related goods or services to Cooperative members under the Contract award.

**PROFESSIONAL ENGINEERING AND OTHER PROFESSIONAL SERVICES EXCLUDED**

The scope of services in this Proposal Invitation and any resulting contract award do not include services that are required to be procured under the Professional Services Procurement Act (Chapter 2254 of the Texas Government Code), including without limitation architecture and professional engineering services.

**ADDITIONAL REQUIREMENTS FOR PURCHASES USING FEDERAL GRANT FUNDS (2 C.F.R. 200 Uniform Guidance/EDGAR):**

When a Cooperative member seeks to procure goods and services using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. This includes, but is not limited to, the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. 200 (sometimes referred to as the "Uniform Guidance" or new "EDGAR"). All Vendors submitting a Proposal must complete the EDGAR Vendor Certification Form contained in the Proposal Forms regarding their willingness and ability to comply with certain requirements which may be applicable to specific Cooperative member purchases using federal grant funds. This information will not be used for evaluation purposes but will be made available to Cooperative members for their use while considering their purchasing options when using federal grant funds. Cooperative members may also require Vendors to enter into ancillary agreements, in addition to the BuyBoard contract's general terms and conditions, to address the member's specific contractual needs, including contract requirements for a procurement using federal grants or contracts.



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**PROPOSER'S ACCEPTANCE AND AGREEMENT**

**Proposal Invitation Name:** Job Order  
Contracting for Energy Conservation and Efficiency

**Proposal Due Date/Opening Date and Time:**  
August 18, 2022, at 4:00 PM

**Proposal Invitation Number:** 681-22

**Location of Proposal Opening:**  
Texas Association of School Boards, Inc.  
BuyBoard Department  
12007 Research Blvd.  
Austin, TX 78759

**Contract Term:** December 1, 2022, through  
November 30, 2024, with three possible one-year  
renewals.

**Anticipated Cooperative Board Meeting Date:**  
October 2022

*By signature below, the undersigned acknowledges and agrees that you are authorized to submit this Proposal, including making all acknowledgements, consents, and certifications herein, on behalf of Proposer and, to the best of your knowledge, the information provided is true, accurate, and complete.*

\_\_\_\_\_  
Name of Proposing Company

\_\_\_\_\_  
Date

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Signature of Authorized Company Official

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Printed Name of Authorized Company Official

\_\_\_\_\_  
Telephone Number of Authorized Company Official

\_\_\_\_\_  
Position or Title of Authorized Company Official

\_\_\_\_\_  
Fax Number of Authorized Company Official

\_\_\_\_\_  
Federal ID Number



## **PROPOSAL FORMS PART 1: COMPLIANCE FORMS**

### **INSTRUCTIONS:**

Proposer must review and complete all forms in this Proposal Forms Part 1:

- Proposal Acknowledgements
- Felony Conviction Disclosure
- Resident/Nonresident Certification
- Debarment Certification
- Vendor Employment Certification
- No Boycott Verification
- No Excluded Nation or Foreign Terrorist Organization Certification
- Historically Underutilized Business Certification
- Construction-Related Goods and Services Affirmation
- Deviation and Compliance
- Vendor Consent for Name Brand Use
- Confidential/Proprietary Information
- EDGAR Vendor Certification
- Compliance Forms Signature Page

**An authorized representative of Proposer must initial in the bottom right corner of each page where indicated and complete and sign the Compliance Forms Signature Page. Proposer's failure to fully complete, initial, and sign forms as required may result in your Proposal being rejected as non-responsive.**

## **PROPOSAL ACKNOWLEDGEMENTS**

The proposing company ("you" or "your") hereby acknowledges and agrees as follows:

1. You have carefully examined and understand all information and documentation associated with this Proposal Invitation, including the Instructions to Proposers, General Information, General Terms and Conditions, attachments/forms, appendices, item specifications, and line items (collectively "Requirements");
2. By your response ("Proposal") to this Proposal Invitation, you propose to supply the products or services submitted at the pricing quoted in your Proposal and in strict compliance with the Requirements, unless specific deviations or exceptions are noted in the Proposal;
3. By your Proposal, you acknowledge and certify all items set forth in the General Terms and Conditions, Section B.12 (Certifications), including all non-collusion certifications and certifications regarding legal, ethical, and other matters set forth therein.
4. Any and all deviations and exceptions to the Requirements have been noted in your Proposal on the required form and no others will be claimed;

**Initial:** \_\_\_\_\_



5. If the Cooperative accepts any part of your Proposal and awards you a Contract, you will furnish all awarded products or services at the pricing quoted and in strict compliance with the Requirements (unless specific deviations or exceptions are noted on the required form and accepted by the Cooperative), including without limitation the Requirements related to:
  - a. conducting business with Cooperative members, including offering pricing to members that is the best you offer compared to similarly situated customers in similar circumstances;
  - b. payment of a service fee in the amount specified and as provided for in this Proposal Invitation;
  - c. the **possible** award of a piggy-back contract by the National Purchasing Cooperative or nonprofit entity, in which event you will offer the awarded products and services in accordance with the Requirements; and
  - d. submitting price sheets or catalogs in the proper format as required by the Cooperative as a prerequisite to activation of your Contract;
6. You have clearly identified on the included form any information in your Proposal that you believe to be confidential or proprietary or that you do not consider to be public information subject to public disclosure under the Texas Public Information Act or similar public information law;
7. The individual submitting this Proposal is duly authorized to enter into the contractual relationship represented by this Proposal Invitation on your behalf and bind you to the Requirements, and such individual (and any individual signing a form or Proposal document) is authorized and has the requisite knowledge to provide the information and make the representations and certifications required in the Requirements;
8. You have carefully reviewed your Proposal, and certify that all information provided is true, complete, and accurate to the best of your knowledge, and you authorize the Cooperative to take such action as it deems appropriate to verify such information; and
9. Any misstatement, falsification, or omission in your Proposal, whenever or however discovered, will be grounds for disqualifying you from consideration for a contract award under this Proposal Invitation, termination of a contract award, or any other remedy or action provided for in the General Terms and Conditions or by law.

### **FELONY CONVICTION DISCLOSURE**

**Subsection (a) of Section 44.034 of the Texas Education Code (Notification of Criminal History of Contractor)** states: "A person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony."

**Section 44.034 further states in Subsection (b):** "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."

Please check (√) one of the following:

- My company is a publicly held corporation. (Advance notice requirement does not apply to publicly held corporation.)
- My company is not owned or operated by anyone who has been convicted of a felony.
- My company is owned/operated by the following individual(s) who has/have been convicted of a felony:

Name of Felon(s): \_\_\_\_\_

Details of Conviction(s): \_\_\_\_\_

**Initial:** \_\_\_\_\_



## RESIDENT/NONRESIDENT CERTIFICATION

Chapter 2252, Subchapter A, of the Texas Government Code establishes certain requirements applicable to proposers who are not Texas residents. Under the statute, a "resident" proposer is a person whose principal place of business is in Texas, including a contractor whose ultimate parent company or majority owner has its principal place of business in Texas. A "nonresident" proposer is a person who is not a Texas resident. Please indicate the status of your company as a "resident" proposer or a "nonresident" proposer under these definitions.

Please check (✓) one of the following:

- I certify that my company is a **Resident Proposer**.
- I certify that my company is a **Nonresident Proposer**.

If your company is a Nonresident Proposer, you must provide the following information for your resident state (the state in which your company's principal place of business is located):

Company Name	Address	
City	State	Zip Code

- A. Does your resident state require a proposer whose principal place of business is in Texas to under-price proposers whose resident state is the same as yours by a prescribed amount or percentage to receive a comparable contract?  
 Yes     No
- B. What is the prescribed amount or percentage? \$ \_\_\_\_\_ or \_\_\_\_\_ %

## DEBARMENT CERTIFICATION

By signature on the Compliance Forms Signature Page, I certify that neither my company nor an owner or principal of my company has been debarred, suspended or otherwise made ineligible for participation in Federal Assistance programs under Executive Order 12549, "Debarment and Suspension," as described in the Federal Register and Rules and Regulations. Neither my company nor an owner or principal of my company is currently listed on the government-wide exclusions in SAM, debarred, suspended, or otherwise excluded by agencies or declared ineligible under any statutory or regulatory authority. My company agrees to immediately notify the Cooperative and all Cooperative members with pending purchases or seeking to purchase from my company if my company or an owner or principal is later listed on the government-wide exclusions in SAM, or is debarred, suspended, or otherwise excluded by agencies or declared ineligible under any statutory or regulatory authority.

## VENDOR EMPLOYMENT CERTIFICATION

Section 44.031(b) of the Texas Education Code establishes certain criteria that a school district must consider when determining to whom to award a contract. Among the criteria for certain contracts is whether the vendor or the vendor's ultimate parent or majority owner (i) has its principal place of business in Texas; or (ii) employs at least 500 people in Texas.

If neither your company nor the ultimate parent company or majority owner has its principal place of business in Texas, does your company, ultimate parent company, or majority owner employ at least 500 people in Texas?

Please check (✓) one of the following:

- Yes
- No

**Initial:** \_\_\_\_\_



## **NO BOYCOTT VERIFICATION**

A Texas governmental entity may not enter into a contract with a value of \$100,000 or more that is to be paid wholly or partly from public funds with a company (excluding a sole proprietorship) that has 10 or more full-time employees for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel and will not boycott Israel during the term of the contract (TEX. GOV'T CODE Ch. 2271), (2) does not boycott energy companies and will not boycott energy companies during the term of the contract (TEX. GOV'T CODE Ch. 2274 effective September 1, 2021), and (3) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association (TEX. GOV'T CODE Ch. 2274 effective September 1, 2021). Accordingly, this certification form is included to the extent required by law.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. TEX. GOV'T CODE §808.001(1).

"Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by Paragraph (A). TEX. GOV'T CODE §809.001(1) (effective September 1, 2021).

"Discriminate against a firearm entity or firearm trade association" means, (A) with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; and (B) does not include: (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship: (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association. TEX. GOV'T CODE §2274.001(3) (effective September 1, 2021).

By signature on the Compliance Forms Signature Page, to the extent applicable, I certify and verify that Vendor does not boycott Israel, boycott energy companies, or discriminate against a firearm entity or firearm trade association and will not do so during the term of any contract awarded under this Proposal Invitation, that this certification is true, complete and accurate, and that I am authorized by my company to make this certification.

**Initial:** \_\_\_\_\_



## **NO EXCLUDED NATION OR FOREIGN TERRORIST ORGANIZATION CERTIFICATION**

Chapter 2252 of the Texas Government Code provides that a Texas governmental entity may not enter into a contract with a company engaged in active business operations with Sudan, Iran, or a foreign terrorist organization – specifically, any company identified on a list prepared and maintained by the Texas Comptroller under Texas Government Code §§806.051, 807.051, or 2252.153. (A company that the U.S. Government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to the contract prohibition.)

By signature on the Compliance Forms Signature Page, I certify and verify that Vendor is not on the Texas Comptroller's list identified above; that this certification is true, complete and accurate; and that I am authorized by my company to make this certification.

## **HISTORICALLY UNDERUTILIZED BUSINESS CERTIFICATION**

A Proposer that has been certified as a Historically Underutilized Business (also known as a Minority/Women Business Enterprise or "MWBE" and all referred to in this form as a "HUB") is encouraged to indicate its HUB certification status when responding to this Proposal Invitation. The BuyBoard website will indicate HUB certifications for awarded Vendors that properly indicate and document their HUB certification on this form. Please check (✓) all that apply:

- I certify that my company has been certified as a HUB in the following categories:
- Minority Owned Business**                       **Women Owned Business**
- Service-Disabled Veteran Owned Business (veteran defined by 38 U.S.C. §101(2), who has a service-connected disability as defined by 38 U.S.C. § 101(16), and who has a disability rating of 20% or more as determined by the U. S. Department of Veterans Affairs or Department of Defense)**

**Certification Number:** \_\_\_\_\_

**Name of Certifying Agency:** \_\_\_\_\_

- My company has **NOT** been certified as a HUB.

**Initial:** \_\_\_\_\_



## **CONSTRUCTION-RELATED GOODS AND SERVICES AFFIRMATION**

The Cooperative issued the BuyBoard Procurement and Construction-Related Goods and Services Advisory for Texas Members ("Advisory"), which provides information specifically relevant to the procurement of construction-related goods and services by Texas Cooperative members. The Advisory, available at [buyboard.com/Vendor/Resources.aspx](http://buyboard.com/Vendor/Resources.aspx), provides an overview of certain legal requirements that are potentially relevant to a Cooperative member's procurement of construction or construction-related goods and services, including those for projects that may involve or require architecture, engineering or independent testing services. A copy of the Advisory can also be provided upon request. Because many BuyBoard contracts include goods or installation services that might be considered construction-related, Proposer must make this Construction Related-Goods and Services Affirmation regardless of type of goods or services associated with this Proposal Invitation.

A contract awarded under this Proposal Invitation covers only the specific goods and/or services awarded by the Cooperative. As explained in the Advisory ("Advisory"), **Texas law prohibits the procurement of architecture or engineering services through a purchasing cooperative. This Proposal Invitation and any Contract awarded thereunder does not include such services. Architecture or engineering services must be procured by a Cooperative member separately, in accordance with the Professional Services Procurement Act (Chapter 2254 of the Texas Government Code) and other applicable law and local policy.**

By signature on the Compliance Forms Signature Page, Proposer affirms that Proposer has obtained a copy of the Advisory, has read and understands the Advisory, and is authorized by Proposer to make this affirmation. If Proposer sells construction-related goods or services to a Cooperative member under a Contract awarded under this Proposal Invitation, Proposer will comply with the Advisory and applicable legal requirements, make a good faith effort to make its Cooperative member customers or potential Cooperative member customers aware of such requirements, and provide a Cooperative member with a copy of the Advisory before accepting the member's Purchase Order, Member Construction Contract, or other agreement for construction-related goods or services.

Initial: \_\_\_\_\_





## **DEVIATION AND COMPLIANCE**

If your company intends to deviate from the General Terms and Conditions, Proposal Specifications or other requirements associated with this Proposal Invitation, you **MUST** list all such deviations on this form, and provide complete and detailed information regarding the deviations on this form or an attachment to this form. **Prior to completing this form, Vendor shall review the General Terms and Conditions section B.4 (Deviations from Item Specifications and General Terms and Conditions). Please note that, as provided in section B.4, certain provisions of the General Terms and Conditions are NOT subject to deviation, and certain deviations will be deemed rejected without further action by the Cooperative. Any attempted deviation, whether directly or indirectly, to provisions identified in this Proposal Invitation as not subject to deviation shall be deemed rejected by the Cooperative and, unless otherwise withdrawn by Vendor, may result in Vendor's Proposal being rejected in its entirety.**

The Cooperative will consider any deviations in its contract award decision and reserves the right to accept or reject a proposal based upon any submitted deviation.

In the absence of any deviation identified and described in accordance with the above, your company must fully comply with the General Terms and Conditions, Proposal Specifications and all other requirements associated with this Proposal Invitation if awarded a Contract under this Proposal Invitation. A deviation will not be effective unless accepted by the Cooperative. The Cooperative, by and through the Cooperative administrator, may, in its sole discretion, seek clarification from and/or communicate with Proposer(s) regarding any submitted deviation, consistent with general procurement principles of fair competition. The Cooperative reserves the right to accept or reject a Proposal based upon any submitted deviation.

Please check (√) one of the following:

- No;** Deviations  
 **Yes;** Deviations

List and fully explain any deviations you are submitting:

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**Initial:** \_\_\_\_\_



## **VENDOR CONSENT FOR NAME BRAND USE**

BuyBoard members seeking to make purchases using a Contract awarded under this Proposal Invitation may view information regarding awarded Vendors, including but not limited to product catalogs, pricelists, pricing, and Proposals, through the BuyBoard website. To improve and enhance the experience of BuyBoard members seeking to procure goods and services under the Contract utilizing the BuyBoard website, any Vendor logo, product images, and similar brand and trademark information provided by Vendor for purposes of the Contract ("Vendor Information") may be posted on the BuyBoard website.

**You acknowledge that, by submitting your Proposal, unless you specifically opt out below, you consent to use of your company's Vendor Information on the BuyBoard website if awarded a Contract.** You further acknowledge that whether, where, and when to include the Vendor Information on the BuyBoard website shall be at the sole discretion of the BuyBoard Administrator. Vendor retains, however, the right of general quality control over the BuyBoard Administrator's authorized display of proprietary Vendor Information. Neither the BuyBoard nor its administrator will be responsible for the use or distribution of Vendor Information by BuyBoard members or any other third party using the BuyBoard website. This Vendor Consent shall be effective for the full term of the Contract, including renewals, unless Vendor provides a signed, written notice revoking consent to [contractadmin@buyboard.com](mailto:contractadmin@buyboard.com). BuyBoard shall have up to thirty days from the date of receipt of a termination or revocation of a Vendor Consent to remove Vendor information from the BuyBoard website.

This Vendor Consent is subject to the Terms and Conditions of the Contract, including, but not limited to, those terms pertaining to Disclaimer of Warranty and Limitation of Liability, Indemnification, and Intellectual Property Infringement.

Vendor logo files must be submitted in one of the following formats:

Preferred:

- Minimum longest dimension (width or height): 384 pixels
- Image type: PNG

Other acceptable formats:

- Minimum longest dimension (width or height): 192 pixels
- Image type: JPG, JPEG, WebP

*(This consent shall not authorize use of your company's Vendor Information by BuyBoard if your company is not awarded a Contract.)*

### **OPT OUT:**

If your company wishes to opt out of the Vendor Consent for Name Brand Use, you must check the opt out box below. **DO NOT select this box unless your company is opting out of this Vendor Consent for Name Brand Use.**

By checking this box, Vendor hereby declines to provide consent for use of Vendor Information (as defined herein) on the BuyBoard website. **By opting out, Vendor acknowledges and agrees that, if Vendor is awarded a Contract under this Proposal Invitation, information available on the BuyBoard for Vendor's awarded products or services may be limited, potentially placing Vendor at a disadvantage and impacting the ability of Cooperative members to search, find, review, and purchase Vendor's awarded products and services on the BuyBoard website.**

**Initial: \_\_\_\_\_**



## CONFIDENTIAL/PROPRIETARY INFORMATION

### A. Public Disclosure Laws

All Proposals, forms, documentation, catalogs, pricelists, or other materials submitted by Vendor to the Cooperative in response to this Proposal Invitation, may be subject to the disclosure requirements of the Texas Public Information Act (Texas Government Code chapter 552.001, *et. seq.*) or similar disclosure law. Proposer must clearly identify on this form any information in its Proposal (including forms, documentation, or other materials submitted with the Proposal) that Proposer considers proprietary or confidential. If Proposer fails to properly identify the information, the Cooperative shall have no obligation to notify Vendor or seek protection of such information from public disclosure should a member of the public or other third-party request access to the information under the Texas Public Information Act or similar disclosure law. When required by the Texas Public Information Act or other disclosure law, Proposer may be notified of any third-party request for information in a Proposal that Proposer has identified in this form as proprietary or confidential.

Does your Proposal (including forms, documentation, catalogs, pricelists, or other materials submitted with the Proposal) contain information which Vendor considers proprietary or confidential?

Please check (✓) one of the following:

**NO**, I certify that none of the information included with this Proposal is considered confidential or proprietary.

**YES**, I certify that this Proposal contains information considered confidential or proprietary and all such information is specifically identified on this form.

If you responded "YES", you must clearly identify below the specific information you consider confidential or proprietary. List each page number, form number, or other information sufficient to make the information readily identifiable. The Cooperative and Cooperative administrator shall not be responsible for a Proposer's failure to clearly identify information considered confidential or proprietary. Further, by submitting a Proposal, Proposer acknowledges that the Cooperative and Cooperative administrator will disclose information when required by law, even if such information has been identified herein as information Vendor considers confidential or proprietary.

Confidential / Proprietary Information:

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*(Attach additional sheets if needed.)*

Initial: \_\_\_\_\_



**B. Copyright Information**

Does your Proposal (including forms, documentation, pricelists, catalogs, or other materials submitted with the Proposal) contain copyright information?

Please check (✓) one of the following:

- NO**, Proposal (including forms, documentation, pricelists, catalogs, or other materials submitted with the Proposal) does not contain copyright information.
- YES**, Proposal (including forms, documentation, pricelists, catalogs, or other materials submitted with the Proposal) does contain copyright information.

If you responded "YES", clearly identify below the specific documents or pages containing copyright information.

Copyright Information: \_\_\_\_\_  
\_\_\_\_\_

*(Attach additional sheets if needed.)*

**C. Consent to Release Confidential/Proprietary/Copyright Information to BuyBoard Members**

BuyBoard members (Cooperative and nonprofit members) seeking to make purchases through the BuyBoard may wish to view information included in the Proposals of awarded Vendors. If you identified information on this form as confidential, proprietary, or subject to copyright, and you are awarded a BuyBoard contract, your acceptance of the BuyBoard contract award constitutes your consent to the disclosure of such information to BuyBoard members, including posting of such information on the secure BuyBoard website for members. Note: Neither the Cooperative nor Cooperative administrator will be responsible for the use or distribution of information by BuyBoard members or any other party.

**D. Consent to Release Proposal Tabulation**

Notwithstanding anything in this Confidential/Proprietary Information form to the contrary, by submitting a Proposal, Vendor consents and agrees that, upon Contract award, the Cooperative may publicly release, including posting on the public BuyBoard website, a copy of the proposal tabulation and award information for the Contract including Vendor name; proposed catalog/pricelist name(s); proposed percentage discount(s), hourly labor rate(s), or other specified pricing; and Vendor award or non-award information.

**Initial:** \_\_\_\_\_



## **EDGAR VENDOR CERTIFICATION** (2 CFR Part 200 and Appendix II)

When a Cooperative member seeks to procure goods and services using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. This includes, but is not limited to, the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR 200 (sometimes referred to as the "Uniform Guidance" or new "EDGAR"). All Vendors submitting a Proposal must complete this EDGAR Certification Form regarding Vendor's willingness and ability to comply with certain requirements which *may* be applicable to specific Cooperative member purchases using federal grant funds. Completed forms will be made available to Cooperative members for their use while considering their purchasing options when using federal grant funds. Cooperative members may also require Vendors to enter into ancillary agreements, in addition to the terms and conditions of the BuyBoard contract, to address the member's specific contractual needs, including contract requirements for a procurement using federal grants or contracts.

***For each of the items below, Vendor should certify Vendor's agreement and ability to comply, where applicable, by having Vendor's authorized representative check the applicable boxes, initial each page, and sign the Compliance Forms Signature Page. If you fail to complete any item in this form, the Cooperative will consider and may list the Vendor's response on the BuyBoard as "NO," the Vendor is unable or unwilling to comply. A "NO" response to any of the items may, if applicable, impact the ability of a Cooperative member to purchase from the Vendor using federal funds.***

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### **1. Vendor Violation or Breach of Contract Terms:**

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 USC 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.

Provisions regarding Vendor default are included in the BuyBoard General Terms and Conditions, including Section E.18, Remedies for Default and Termination of Contract. Any Contract award will be subject to such BuyBoard General Terms and Conditions, as well as any additional terms and conditions in any Purchase Order, Member Construction Contract, or Cooperative member ancillary contract agreed upon by Vendor and the Cooperative member which must be consistent with and protect the Cooperative member at least to the same extent as the BuyBoard Terms and Conditions. The remedies under the Contract are in addition to any other remedies that may be available under law or in equity. By submitting a Proposal, you agree to these Vendor violation and breach of contract terms.

**YES**, I agree.                       **NO**, I do not agree.

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### **2. Termination for Cause or Convenience:**

For any Cooperative member purchase or contract in excess of \$10,000 made using federal funds, you agree that the following term and condition shall apply:

*The Cooperative member may terminate or cancel any Purchase Order under this Contract at any time, with or without cause, by providing seven (7) business days advance written notice to the Vendor. If this Agreement is terminated in accordance with this Paragraph, the Cooperative member shall only be required to pay Vendor for goods or services delivered to the Cooperative member prior to the termination and not otherwise returned in accordance with Vendor's return policy. If the Cooperative member has paid Vendor for goods or services not yet provided as of the date of termination, Vendor shall immediately refund such payment(s).*

If an alternate provision for termination of a Cooperative member purchase for cause and convenience, including the manner by which it will be effected and the basis for settlement, is included in the Cooperative member's Purchase Order, Member Construction Contract, or ancillary agreement agreed to by the Vendor, the Cooperative member's provision shall control.

**YES**, I agree.                       **NO**, I do not agree.                      **Initial:** \_\_\_\_\_



**3. Equal Employment Opportunity:**

Except as otherwise provided under 41 CFR Part 60, all Cooperative member purchases or contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall be deemed to include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

The equal opportunity clause provided under 41 CFR 60-1.4(b) is hereby incorporated by reference. Vendor agrees that such provision applies to any Cooperative member purchase or contract that meets the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 and Vendor agrees that it shall comply with such provision.

YES, I agree.  NO, I do not agree.

**4. Davis-Bacon Act:**

When required by Federal program legislation, Vendor agrees that, for all Cooperative member prime construction contracts/purchases in excess of \$2,000, Vendor shall comply with the Davis-Bacon Act (40 USC 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, Vendor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Vendor shall pay wages not less than once a week.

Current prevailing wage determinations issued by the Department of Labor are available at [beta.sam.gov](http://beta.sam.gov). Vendor agrees that, for any purchase to which this requirement applies, the award of the purchase to the Vendor is conditioned upon Vendor's acceptance of the wage determination.

Vendor further agrees that it shall also comply with the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

YES, I agree.  NO, I do not agree.

**5. Contract Work Hours and Safety Standards Act:**

Where applicable, for all Cooperative member contracts or purchases in excess of \$100,000 that involve the employment of mechanics or laborers, Vendor agrees to comply with 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 USC 3702 of the Act, Vendor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

The requirements of 40 USC 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

YES, I agree.  NO, I do not agree.

Initial: \_\_\_\_\_



**6. Right to Inventions Made Under a Contract or Agreement:**

If the Cooperative member’s Federal award meets the definition of “funding agreement” under 37 CFR 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance or experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Vendor agrees to comply with the above requirements when applicable.

- YES, I agree.  NO, I do not agree.

**7. Clean Air Act and Federal Water Pollution Control Act:**

Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act (33 USC 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 USC 7401-7671q.) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

When required, Vendor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act.

- YES, I agree.  NO, I do not agree.

**8. 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 government-wide 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 1966 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.

Vendor certifies that Vendor is not currently listed on the government-wide exclusions in SAM, is not debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549. Vendor further agrees to immediately notify the Cooperative and all Cooperative members with pending purchases or seeking to purchase from Vendor if Vendor is later listed on the government-wide exclusions in SAM, or is debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- YES, I agree.  NO, I do not agree.

**9. Byrd Anti-Lobbying Amendment:**

Byrd Anti-Lobbying Amendment (31 USC 1352) - Vendors 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 USC 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. As applicable, Vendor agrees to file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 USC 1352).

- YES, I agree.  NO, I do not agree.

Initial: \_\_\_\_\_



**10. Procurement of Recovered Materials:**

For Cooperative member purchases utilizing Federal funds, Vendor agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act where applicable and provide such information and certifications as a Cooperative member may require to confirm estimates and otherwise comply. 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.

- YES, I agree.  NO, I do not agree.

**11. Domestic Preferences for Procurements:**

Where appropriate and consistent with law, 2 CFR §200.322 contains certain considerations for domestic preferences for procurements which may be applicable to Cooperative members using federal funds. When required by a Cooperative member, Vendor agrees to provide such information or certification as may reasonably be requested by the Cooperative member regarding Vendor’s products, including whether goods, products, or materials are produced in the United States.

- YES, I agree.  NO, I do not agree.

**12. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

2 CFR §200.216 prohibits expending federal loan or grant funds to procure or obtain certain telecommunications and video surveillance services or equipment. To the extent applicable and when required by a Cooperative member, Vendor agrees to provide such information or certification as may reasonably be requested by the Cooperative member to confirm whether any telecommunications or video surveillance services or equipment provided by Vendor is covered equipment or covered services under 2 CFR §200.216.

- YES, I agree.  NO, I do not agree.

**13. Profit as a Separate Element of Price:**

For purchases using federal funds in excess of the Simplified Acquisition Threshold, a Cooperative member may be required to negotiate profit as a separate element of the price. See, 2 CFR 200.324(b). When required by a Cooperative member, Vendor agrees to provide information and negotiate with the Cooperative member regarding profit as a separate element of the price for a particular purchase. However, Vendor agrees that the total price, including profit, charged by Vendor to the Cooperative member shall not exceed the awarded pricing, including any applicable discount, under Vendor’s Cooperative Contract.

- YES, I agree.  NO, I do not agree.

**14. General Compliance and Cooperation with Cooperative Members:**

In addition to the foregoing specific requirements, Vendor agrees, in accepting any Purchase Order from a Cooperative member, it shall make a good faith effort to work with Cooperative members to provide such information and to satisfy such requirements as may apply to a particular Cooperative member purchase or purchases including, but not limited to, applicable recordkeeping and record retention requirements.

- YES, I agree.  NO, I do not agree.

Initial: \_\_\_\_\_





12007 Research Boulevard • Austin, Texas 78759-2439 • PH: 800-695-2919 • [buyboard.com](http://buyboard.com)

## **COMPLIANCE FORMS SIGNATURE PAGE**

By initialing pages and by signature below, I certify that I have reviewed the following forms; that the information provided therein is true, complete, and accurate; and that I am authorized by my company to make all certifications, consents, acknowledgements, and agreements contained herein:

- Proposal Acknowledgements
- Felony Conviction Disclosure
- Debarment Certification
- Resident/Nonresident Certification
- Vendor Employment Certification
- No Boycott Verification
- No Excluded Nation or Foreign Terrorist Organization Certification
- Historically Underutilized Business Certification
- Construction-Related Goods and Services Affirmation
- Deviation and Compliance
- Vendor Consent for Name Brand Use
- Confidential/Proprietary Information
- EDGAR Vendor Certification

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Authorized Company Official

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date



## PROPOSAL FORMS PART 2: VENDOR INFORMATION FORMS

### INSTRUCTIONS:

Proposer must completely and accurately provide all information requested in the following Vendor Information Forms or your Proposal may be rejected as non-responsive:

- Vendor Business Name
- Vendor Contact Information
- Federal and State/Purchasing Cooperative Experience
- Governmental References
- Company Profile
- Texas Regional Service Designation
- State Service Designation
- National Purchasing Cooperative Vendor Award Agreement (*Vendors serving outside Texas only*)
- Local/Authorized Seller Listings
- Proposal Invitation Questionnaire
- Vendor Request to Self-Report BuyBoard Purchases (*Optional*)

To the extent any information requested is not applicable to your company, you must so indicate on the form.

## VENDOR BUSINESS NAME

By submitting a Proposal, Vendor is seeking to enter into a legal contract with the Cooperative. As such, Vendor must be an individual or legal business entity capable of entering into a binding contract.

**Name of Proposing Company:** \_\_\_\_\_  
*(List the **legal** name of the company seeking to contract with the Cooperative. Do **NOT** list an assumed name, dba, aka, etc. here. Such information may be provided below. If you are submitting a joint proposal with another entity to provide the same proposed goods or services, each submitting entity should complete a separate vendor information form. Separately operating legal business entities, even if affiliated entities, which propose to provide goods or services separately must submit their own Proposals.)*

Please check (✓) one of the following:

- Type of Business:**     Individual/Sole Proprietor     Corporation     Limited Liability Company     Partnership
- Other (Specify: \_\_\_\_\_)

**State of Incorporation** (if applicable): \_\_\_\_\_

**Federal Employer Identification Number:** \_\_\_\_\_  
*(Vendor must include a completed IRS W-9 form with their Proposal)*

**Name by which Vendor, if awarded, wishes to be identified on the BuyBoard:** *(Note: If different than the Name of Proposing Company listed above, only valid trade names (dba, aka, etc.) of the Proposing Company may be used and a copy of your Assumed Name Certificate(s), if applicable, must be attached.)*



## VENDOR CONTACT INFORMATION

*Vendor shall provide the requested Vendor Contact Information in the electronic proposal submission system including contract, purchase order, RFQ, and invoice contacts (or, if submitting a hard copy Proposal, timely request and complete the Vendor Contact Information form in accordance with the Instructions to Proposers).*

## FEDERAL AND STATE/PURCHASING COOPERATIVE EXPERIENCE

The Cooperative strives to provide Cooperative members with the best services and products at the best prices available from Vendors with the technical resources and ability to serve Cooperative members. Please respond to the following questions.

1. Provide the dollar value of sales to or through purchasing cooperatives at or based on an established catalog or market price during the previous 12-month period or the last fiscal year: \$\_\_\_\_\_. (The period of the 12-month period is \_\_\_\_/\_\_\_\_). In the event that a dollar value is not an appropriate measure of the sales, provide and describe your own measure of the sales of the item(s).
2. By submitting a proposal, you agree that, based on your written discounting policies, the discounts you offer the Cooperative are equal to or better than the best price you offer other purchasing cooperatives for the same items under equivalent circumstances.
3. Provide the information requested below for other purchasing cooperatives for which Proposer currently serves, or in the past has served, as an awarded vendor. Rows should be added to accommodate as many purchasing cooperatives as required.

PURCHASING GROUP	CURRENT VENDOR? (Y/N)	FORMER VENDOR (Y/N)? – IF YES, LIST YEARS AS VENDOR	AWARDED COMMODITY CATEGORY(IES)
1. Federal General Services Administration			
2. T-PASS (State of Texas)			
3. OMNIA Partners			
4. Sourcwell (NJPA)			
5. E&I Cooperative			
6. Houston-Galveston Area Council (HGAC)			
7. Choice Partners			
8. The Interlocal Purchasing System (TIPS)			
9. Other			

MY COMPANY DOES NOT CURRENTLY HAVE ANY OF THE ABOVE OR SIMILAR TYPE CONTRACTS.

### CURRENT BUYBOARD VENDORS

If you are a current BuyBoard vendor in the same contract category as proposed in this Proposal Invitation, indicate the discount for your current BuyBoard contract and the proposed discount in this Proposal. Explain any difference between your current and proposed discounts.

**Current Discount (%)**: \_\_\_\_\_ **Proposed Discount (%)**: \_\_\_\_\_

**Explanation**: \_\_\_\_\_



## GOVERNMENTAL REFERENCES

For your Proposal to be considered, you must supply a minimum of five (5) individual governmental entity references. The Cooperative may contact any and all references provided as part of the Proposal evaluation. Provide the information requested below, including the existing pricing/discounts you offer each customer. The Cooperative may determine whether pricing/discounts are fair and reasonable by comparing pricing/discounts stated in your Proposal with the pricing/discounts you offer other governmental customers. Attach additional pages if necessary.

<u>Entity Name</u>	<u>Contact</u>	<u>Phone#</u>	<u>Email Address</u>	<u>Discount</u>	<u>Quantity/ Volume</u>
1. _____					
2. _____					
3. _____					
4. _____					
5. _____					

Do you ever modify your written policies or standard governmental sales practices as identified in the above chart to give better discounts (lower pricing) than indicated? YES  NO  If YES, please explain:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## COMPANY PROFILE

Information on awarded Cooperative Contracts is available to Cooperative Members on the BuyBoard website. If your company is awarded a Contract under this Proposal Invitation, please provide a brief company description that you would like to have included with your company profile on the BuyBoard website. **Submit your company profile in a separate file, in Word format, with your Proposal.** (Note: Vendor is solely responsible for any content provided for inclusion on the BuyBoard website. The Cooperative reserves the right to exclude or remove any content in its sole discretion, with or without prior notice, including but not limited to any content deemed by the Cooperative to be inappropriate, irrelevant to the Contract, inaccurate, or misleading.)

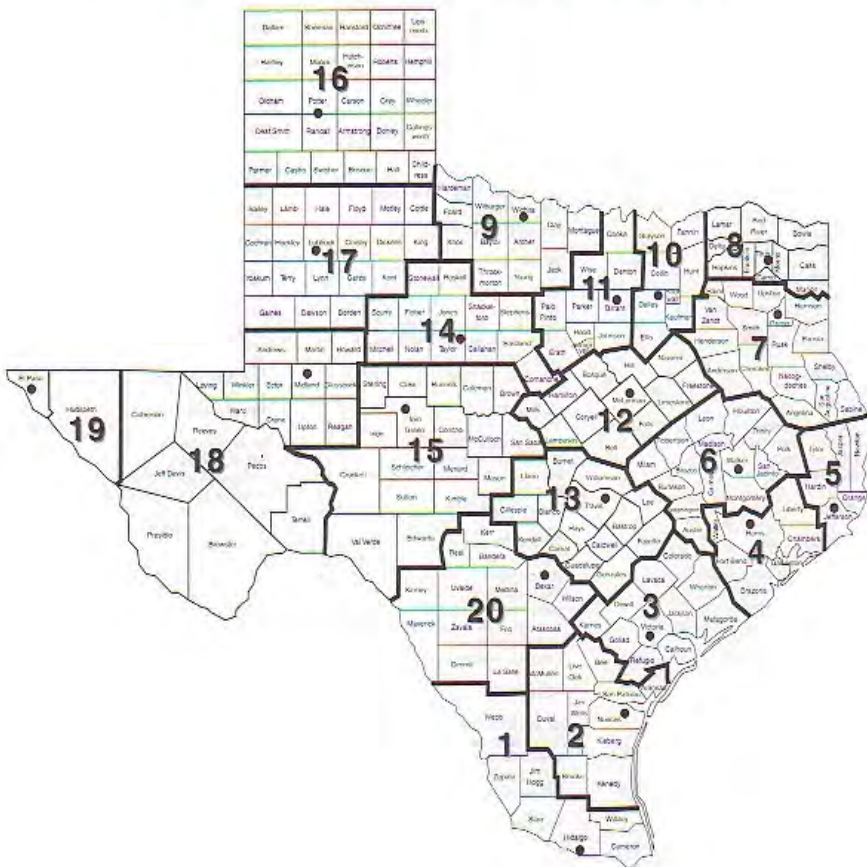
## TEXAS REGIONAL SERVICE DESIGNATION

***This form must be completed in the electronic proposal submission system (or, if submitting a hard copy Proposal, timely request and complete the form in accordance with the Instructions to Proposers).***

The Cooperative (referred to as "Texas Cooperative" in this form and in the State Service Designation form) offers vendors the opportunity to service its members throughout the entire State of Texas. In the electronic proposal submission system, you must indicate if you will service Texas Cooperative members statewide or, if you do not plan to service all Texas Cooperative members statewide, you **must** indicate the specific regions you will service. If you propose to serve different regions for different products or services included in your Proposal, you must complete and submit a separate Texas Regional Service Designation form for each group of products and clearly indicate the products or services to which the designation applies. **(Additional forms can be obtained by contacting [bids@buyboard.com](mailto:bids@buyboard.com) at least five (5) business days prior to the Proposal Due Date.)** ***By designating a region or regions, you are certifying that you are authorized and willing to provide the proposed products and services in those regions. Designating regions in which you are either unable or unwilling to provide the specified products and services shall be grounds for either rejection of your Proposal or, if awarded, termination of your Contract.*** Additionally, if you do not plan to service Texas Cooperative members (i.e., if you will service only states other than Texas), you must so indicate on the form in the electronic proposal submission system.

### Regional Education Service Centers

#### Region and Headquarters



- 1 Edinburg
- 2 Corpus Christi
- 3 Victoria
- 4 Houston
- 5 Beaumont
- 6 Huntsville
- 7 Kilgore
- 8 Mount Pleasant
- 9 Wichita Falls
- 10 Richardson
- 11 Fort Worth
- 12 Waco
- 13 Austin
- 14 Abilene
- 15 San Angelo
- 16 Amarillo
- 17 Lubbock
- 18 Midland
- 19 El Paso
- 20 San Antonio



## STATE SERVICE DESIGNATION

***This form must be completed in the electronic proposal submission system (or, if submitting a hard copy Proposal, timely request and complete the in accordance with the Instructions to Proposers).***

As set forth in the Proposal Invitation, it is the Cooperative’s intent that other governmental entities in the United States have the opportunity to purchase goods or services awarded under the Contract, subject to applicable state law, through a piggy-back award or similar agreement through the National Purchasing Cooperative BuyBoard. If you plan to service the entire United States or only specific states, you must complete the State Service Designation information in the electronic proposal submission system. (Note: If you plan to service Texas Cooperative members, be sure that you complete the Texas Regional Service Designation form.) ***In addition to this form, to be considered for a piggy-back award by the National Purchasing Cooperative, you must have an authorized representative sign the National Purchasing Cooperative Vendor Award Agreement that follows this page.***

If you serve different states for different products or services included in your Proposal, you must complete and submit a separate State Service Designation form for each group of products and clearly indicate the products or services to which the designation applies. (Additional forms can be obtained by contacting [bids@buyboard.com](mailto:bids@buyboard.com) at least five (5) business days prior to the Proposal Due Date.) ***By designating a state or states, you are certifying that you are authorized and willing to provide the proposed products and services in those states. Designating states in which you are either unable or unwilling to provide the specified products and services shall be grounds for either rejection of your Proposal or, if awarded, termination of your Contract.***

- I will service all states in the United States.
- I will not service all states in the United States.

Alabama  
 Alaska  
 Arizona  
 Arkansas  
 California (Public Contract Code 20118 & 20652)  
 Colorado  
 Connecticut  
 Delaware  
 District of Columbia  
 Florida  
 Georgia  
 Hawaii  
 Idaho  
 Illinois  
 Indiana  
 Iowa  
 Kansas  
 Kentucky  
 Louisiana  
 Maine  
 Maryland  
 Massachusetts  
 Michigan  
 Minnesota  
 Mississippi  
 Missouri  
 Montana

Nebraska  
 Nevada  
 New Hampshire  
 New Jersey  
 New Mexico  
 New York  
 North Carolina  
 North Dakota  
 Ohio  
 Oklahoma  
 Oregon  
 Pennsylvania  
 Rhode Island  
 South Carolina  
 South Dakota  
 Tennessee  
 Texas  
 Utah  
 Vermont  
 Virginia  
 Washington  
 West Virginia  
 Wisconsin  
 Wyoming



## **NATIONAL PURCHASING COOPERATIVE VENDOR AWARD AGREEMENT**

In accordance with the Terms and Conditions associated with this Proposal Invitation, a contract awarded under this Proposal Invitation may be "piggy-backed" by another governmental entity. The National Purchasing Cooperative is an intergovernmental purchasing cooperative formed by certain school districts outside of Texas to serve its members throughout the United States. If you agree to be considered for a piggy-back award by the National Purchasing Cooperative, you agree to the following terms and agree to serve National Purchasing Cooperative members in the states you have indicated on the State Service Designation form, in your Proposal.

**By signing this form, Proposer (referred to in this Agreement as "Vendor") agrees as follows:**

1. Vendor acknowledges that if The Local Government Purchasing Cooperative ("Texas Cooperative") awards Vendor a contract under this Proposal Invitation ("Underlying Award"), the National Purchasing Cooperative ("National Cooperative") may - but is not required to - "piggy-back" on or re-award all or a portion of that Underlying Award ("Piggy-Back Award"). By signing this National Cooperative Vendor Award Agreement ("Agreement"), Vendor accepts and agrees to be bound by any such Piggy-Back Award as provided for herein.
2. In the event National Cooperative awards Vendor a Piggy-Back Award, the National Cooperative Administrator ("BuyBoard Administrator") will notify Vendor in writing of such Piggy-Back Award, which award shall commence on the effective date stated in the Notice and end on the expiration date of the Underlying Award, subject to annual renewals as authorized in writing by the BuyBoard Administrator. Vendor agrees that no further signature or other action is required of Vendor in order for the Piggy-Back Award and this Agreement to be binding upon Vendor. Vendor further agrees that no interlineations or changes to this Agreement by Vendor will be binding on National Cooperative, unless such changes are agreed to by its BuyBoard Administrator in writing.
3. Vendor agrees that it shall offer its goods and services to National Cooperative members at the same unit pricing and same general terms and conditions, subject to applicable state laws in the state of purchase, as required by the Underlying Award. However, nothing in this Agreement prevents Vendor from offering National Cooperative members better (i.e., lower) competitive pricing and more favorable terms and conditions than those in the Underlying Award.
4. Vendor hereby agrees and confirms that it will serve those states it has designated on the State Service Designation Form of this Proposal Invitation. Any changes to the states designated on the State Service Designation Form must be approved in writing by the BuyBoard Administrator.
5. Vendor agrees to pay National Cooperative the service fee provided for in the Underlying Award based on the amount of purchases generated from National Cooperative members through the Piggy-Back Award. Vendor shall remit payment to National Cooperative on such schedule as it specifies (which shall not be more often than monthly). Further, upon request, Vendor shall provide National Cooperative with copies of all purchase orders generated from National Cooperative members, vendor invoices, and/or such other documentation regarding those purchase orders as the Cooperative's administrators may require in their reasonable discretion for purposes of reviewing and verifying purchase activity. Vendor further agrees that National Cooperative shall have the right, upon reasonable written notice, to review Vendor's records pertaining to purchases made by National Cooperative members in order to verify the accuracy of service fees.
6. Vendor agrees that the Underlying Award, including its General Terms and Conditions, are adopted by reference to the fullest extent such provisions can reasonably apply to the post-proposal/contract award phase. The rights and responsibilities that would ordinarily inure to the Texas Cooperative pursuant to the Underlying Award shall inure to National Cooperative; and, conversely, the rights and responsibilities that would ordinarily inure to Vendor in the Underlying Award shall inure to Vendor in this Agreement. Vendor recognizes and agrees that Vendor and National Cooperative are the only parties to this Agreement, and that nothing in this Agreement has application to other third parties, including the Texas Cooperative. In the event of conflict between this Agreement and the terms of the Underlying Award, the terms of this Agreement shall control, and then only to the extent necessary to reconcile the conflict.



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7. This Agreement shall be governed and construed in accordance with the laws of the State of Rhode Island and venue for any dispute shall lie in the federal district court of Alexandria, Virginia.

8. Vendor acknowledges and agrees that the award of a Piggy-Back Award is within the sole discretion of National Cooperative, and that this Agreement does not take effect unless and until National Cooperative awards Vendor a Piggy-Back Award and the BuyBoard Administrator notifies Vendor in writing of such Piggy-Back Award as provided for herein.

WHEREFORE, by signing below Vendor agrees to the foregoing and warrants that it has the authority to enter into this Agreement.

\_\_\_\_\_  
Name of Vendor

\_\_\_\_\_  
Proposal Invitation Number

\_\_\_\_\_  
Signature of Authorized Company Official

\_\_\_\_\_  
Printed Name of Authorized Company Official

\_\_\_\_\_  
Date





## LOCATION/AUTHORIZED SELLER LISTINGS

If you have more than one location/authorized seller that will service a Contract awarded under this Proposal Invitation, please list each location/authorized seller below. If additional sheets are required, please duplicate this form as necessary. NOTE: Awarded Vendors shall remain responsible for all aspects of the Contract, including processing of Purchase Orders, and shall be responsible for the performance of all locations and authorized sellers under and in accordance with the Contract. *If you are a product manufacturer and wish to designate Designated Dealers as defined in the General Terms and Conditions to receive Cooperative member Purchase Orders on your behalf, you must complete the Manufacturer Designated Dealer form.*

Location/Authorized Seller Name	Contact Person	Contact Information (Mailing Address, Phone, Fax, Email)



## PROPOSAL INVITATION QUESTIONNAIRE

The Cooperative will use your responses to the questions below in evaluating your Proposal and technical and financial resources to provide the goods and perform the services (“Work”) under the BuyBoard contract contemplated by this Proposal Invitation (“Contract”). Proposers must fully answer each question, numbering your responses to correspond to the questions/numbers below. Proposers must complete below or attach your responses to this questionnaire and submit in one document with your Proposal. **You must submit the questionnaire and responses with your Proposal or the Proposal will not be considered.**

1. List the number of years Proposer has been in business and former business names (if applicable). Note whether your company is currently for sale or involved in any transaction that would significantly alter its business or result in acquisition by another entity.

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2. Describe Vendor’s direct experience (not as a subcontractor) performing the Job Order Contracting (JOC) work proposed under this Contract. Include a brief description of **energy efficiency and conservation projects** you have completed for Texas or other local governmental entities in the last 5 years, and include for each the project name, scope, value, and date, and the name of the procuring government entity and entity contact person. Identify the contracts that best represent Vendor’s capabilities relative to this Contract and provide with your Proposal response recommendation letters from **five governmental entity references** for whom Proposer provided this service. If referring to projects of key employees to demonstrate experience, identify the employee, the employee’s role in the project, and the employee’s current position with your company.

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3. Describe the resources Proposer has to manage staff and successfully perform the Work contemplated under this Contract. State the number and summarize the experience of company personnel who may be utilized for the Work, including those who will be available to Cooperative members for assistance with project development, technical issues, and product selection for Work associated with this Contract.

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4. The Contract does not include architectural or engineering services, which must be procured separately, outside of the Cooperative, in accordance with Chapter 2254 of the Texas Government Code (Professional Services Procurement Act) or other applicable law (for entities outside of Texas). If you are performing Work under the Contract on a project that requires the services of an architect or professional engineer, how will you work with a Cooperative member and its designated architect or engineer with respect to services that must be procured outside the Contract?

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5. Describe the tasks and functions that can be completed by Vendor in-house without the use of a subcontractor or other third party.

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6. **Marketing Strategy:** For your Proposal to be considered, you must submit the Marketing Strategy you will use if the Cooperative accepts all or part of your Proposal. (*Example: Explain how your company will initially inform Cooperative members of your BuyBoard Contract, and how you will continue to support the BuyBoard for the duration of the Contract term.*) Attach additional pages if necessary.

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7. Describe Proposer's financial capability to perform the Contract. State or describe the firm's financial strength and rating, bonding capacity, and insurance coverage limits. State whether the firm, or any of the firm's past or present owners, principal shareholders or stockholders, or officers, have been a debtor party to a bankruptcy, receivership, or insolvency proceeding in the last 7 years, and identify any such debtor party by name and relationship to or position with your firm.

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8. Does your company have any outstanding financial judgments and/or is it currently in default on any loan or financing agreement? If so, provide detailed information on the nature of such items and prospects for resolution.

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9. List all contracts, if any, in the last 10 years on which Proposer has defaulted, failed to complete or deliver the work, or that have been terminated for any reason. Include any contract for which the surety was notified of a potential claim in regard to a payment or performance bond. For each such contract, provide the project name, scope, value and date and the name of the procuring entity. Fully explain the circumstances of the default, notice to surety, failure to complete or deliver the work, or termination.

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10. List all litigation or other legal proceedings (including arbitration proceedings and/or claims filed with a surety in regard to a payment or performance bond), if any, in the last 10 years brought against your firm, or any of the firm's past or present owners, principal shareholders or stockholders, officers, agents or employees, that relate to or arise from a contract similar to this Contract or the Work contemplated under this Contract. Provide the style of the lawsuit or proceeding (name of parties and court or tribunal in which filed), nature of the claim, and resolution or current status.

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11. Describe in detail the quality control system Vendor will use, including third party auditing certification, to support the long-term performance and structural strength of the products to be used in a project under the Contract.

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12. If the Work will require Vendor to tender performance or payment bonds, provide the name of the bonding company or surety that will issue such bonds.

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13. Describe in detail all documented safety issues, if any, that have involved Vendor in the last three years related to the type of work contemplated under this Contract. Provide a three-year history of your firm's workers compensation experience modifier.

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## VENDOR REQUEST TO SELF-REPORT BUYBOARD PURCHASES

The General Terms and Conditions require that all Purchase Orders generated by or under any Contract awarded under this Proposal Invitation be processed through the BuyBoard and, except as expressly authorized in writing by the Cooperative administrator, Vendors are not authorized to process Purchase Orders received directly from Cooperative members that have not been processed through the BuyBoard or provided to the Cooperative. In accordance with this provision, Vendor may request authorization of the Cooperative administrator to self-report Cooperative member purchases if awarded a Contract under this Proposal Invitation. By making such a request, Vendor acknowledges and agrees that self-reporting is specifically subject to and conditioned upon (1) Vendor's agreement to the Additional Terms and Conditions for BuyBoard Self-Reporting which are included in this Proposal Invitation and incorporated herein for all purposes and (2) approval of this request in writing by the Cooperative administrator.

**Note: This form is NOT required as part of your proposal. You should sign and return this form ONLY if you wish to request authorization to self-report BuyBoard purchases.** Any request to self-report will not be effective, and Vendor shall not be authorized to self-report BuyBoard member purchases, unless and until (1) Vendor is awarded a Contract under this Proposal Invitation, and (2) the request has been approved in writing by the Cooperative administrator.

**By my signature below, I hereby request authorization from the Cooperative administrator to self-report BuyBoard purchases if my company is awarded a Contract. I certify that I am authorized by the above-named Vendor to approve this form, and I have received and read the Additional Terms and Conditions for BuyBoard Self-Reporting included in this Proposal Invitation and do hereby approve and agree to such terms and conditions on behalf of Vendor.**

NAME OF VENDOR: \_\_\_\_\_

\_\_\_\_\_  
Signature of Vendor Authorized Representative

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

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

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

*(For Cooperative Administrator Use Only)*

Approved by BuyBoard Administrator: \_\_\_\_\_

Effective/Start Date for Self-Reporting: \_\_\_\_\_



## PROPOSAL SPECIFICATION SUMMARY

The categories and items specified for this Proposal Invitation are summarized below. For full Proposal Specifications, you must review and complete the Proposal Specification information in the electronic proposal submission system in accordance with the Instructions to Proposers (or, if submitting a hard copy Proposal, timely request and complete the Proposal Specification Form in accordance with the Instructions to Proposers).

### Proposal Invitation No. 681-22 – Job Order Contracting for Energy Conservation and Efficiency

**Price Proposal:** In submitting a Proposal, the Proposer agrees to execute all of the work under the Job Order Contract for each Job Order issued by a Cooperative member using coefficients as defined and described within this Proposal Invitation.

Proposers shall propose two (2) coefficient factors based on using the current edition of the **Gordian Facilities Construction Cost Data Book with RSMMeans Data** ("Unit Price Book" or "RSMMeans Cost Data Book") with updates as applicable, total column with overhead and profit. The first coefficient factor is to be applied to that work anticipated to be accomplished during normal working hours (7:00 am - 5:00 pm, Monday thru Friday ("Standard Hours")). The second coefficient factor shall be applied to work anticipated to be accomplished during other than Standard Hours ("Non-Standard Hours"). Any work performed during Non-Standard Hours, at Vendor's own option when approved by the Cooperative member in accordance the Program Requirements, shall be subject to the Proposer's Coefficient for Standard Hours.

This Proposal Invitation is for job order contracting services focused on energy efficiency and conservation. Core work under the Contract shall be limited to the following sections in the **Gordian Facilities Construction Cost Data Book with RSMMeans Data**. Other tasks shall be permitted only when incidental/related to the core work.

- **GENERAL REQUIREMENTS;** Section No. 01 11 to 01 93
- **THERMAL AND MOISTURE PROTECTION;** Section No. 07 01 to 07 27
- **PLUMBING;** Section No. 22 01 to 22 11; 22 42 to 22 47
- **HEATING VENTILATION AIR CONDITIONING;** Section No. 23 05 to 23 84
- **ELECTRICAL;** Section No. 26 01 to 26 71

Proposed coefficients shall be applied to the Unit Price Book for all tasks other than non-pre-priced work as described in the Program Requirements.

It is understood and Proposer acknowledges that, by making this Proposal, any change in the actual work required under the Contract from what is projected herein shall not affect the firm coefficient factors proposed by Proposer or the prices contained in the Unit Price Book.

The Proposer's Coefficients shall be "net" (e.g. 1.0) or a percentage "decrease from" (e.g. .95) or "increase to" (e.g. 1.21) to the unit prices listed in the Unit Price Book. **Proposer's Coefficient factors are to be carried no further than two (2) decimal places.** Any Proposal containing separate coefficient factors for separate line items in the Unit Price Book shall be rejected as non-responsive.

The actual pricing for work performed under any contract resulting from this Proposal Invitation shall be based on the Unit rates contained in the Unit price Book, "Total Including O&P" first adjusted by the Quarterly City Cost Index for nearest local city and then multiplied by the Proposer's Coefficient. The Coefficient factors shall be firm for the entire contract including any elected option years.

The Proposer's Coefficients can be applied to designated regions according to the Texas Regional Service Designation form included in the Proposal. If you have selected to service only specific regions in the Texas Regional Service Designation form and propose to use different coefficients for different regions, you must complete the "REGIONAL (State of Texas)" proposal



specification lines in the electronic proposal submission system and provide Proposer's Coefficients for each of the regions you will service.

As set forth in the Proposal Invitation, it is the Cooperative's intent that other governmental entities throughout the United States have the opportunity to purchase the services awarded under the Contract, subject to applicable state law, through a piggy-back award or similar agreement, including a potential piggy-back award by the National Purchasing Cooperative. The Proposer may elect to potentially perform work outside of the State of Texas as indicated on the State Service Designation Form. If the Proposer wishes to quote Proposer's Coefficients for out of state work in the event a piggy-back award or similar agreement is awarded by the National Purchasing Cooperative or other eligible entity, you must complete the "NATIONAL" proposal specification lines in the electronic proposal submission system and provide Proposer's Coefficients for each of the states you will service as designated on the State Service Designation Form.

Vendors proposing must complete the line item fields in the electronic proposal submission system and shall include the Proposer's Coefficients. The Proposer's Coefficients can be applied to all work state-wide in the state(s) Vendor proposes to serve or can be applied to designated regions (if applicable) according to the regions listed on the Proposal.

**NOTE:** VENDOR MUST PROVIDE A COEFFICIENT FACTOR FOR STANDARD HOURS AND FOR NON-STANDARD HOURS, EACH IDENTIFIED AS A DECIMAL MULTIPLIER OF THE UNIT PRICE BOOK AS DEFINED IN THIS PROPOSAL INVITATION NOT TO EXCEED FOUR DECIMAL PLACES.

**Section I: REGIONAL (State of Texas)**

1. **Texas Region 1 Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
2. **Texas Region 1 Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
3. **Texas Region 2 Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
4. **Texas Region 2 Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
5. **Texas Region 3 Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
6. **Texas Region 3 Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
7. **Texas Region 4 Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
8. **Texas Region 4 Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
9. **Texas Region 5 Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
10. **Texas Region 5 Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
11. **Texas Region 6 Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
12. **Texas Region 6 Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
13. **Texas Region 7 Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
14. **Texas Region 7 Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
15. **Texas Region 8 Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
16. **Texas Region 8 Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
17. **Texas Region 9 Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
18. **Texas Region 9 Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
19. **Texas Region 10 Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
20. **Texas Region 10 Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.





21. **Texas Region 11 Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
22. **Texas Region 11 Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
23. **Texas Region 12 Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
24. **Texas Region 12 Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
25. **Texas Region 13 Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
26. **Texas Region 13 Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
27. **Texas Region 14 Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
28. **Texas Region 14 Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
29. **Texas Region 15 Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
30. **Texas Region 15 Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
31. **Texas Region 16 Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
32. **Texas Region 16 Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
33. **Texas Region 17 Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
34. **Texas Region 17 Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
35. **Texas Region 18 Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
36. **Texas Region 18 Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
37. **Texas Region 19 Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
38. **Texas Region 19 Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
39. **Texas Region 20 Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
40. **Texas Region 20 Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.

## **Section II: NATIONAL (Other States)**

41. **Alabama Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
42. **Alabama Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
43. **Alaska Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
44. **Alaska Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
45. **Arizona Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
46. **Arizona Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
47. **Arkansas Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
48. **Arkansas Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
49. **California Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
50. **California Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
51. **Colorado Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
52. **Colorado Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
53. **Connecticut Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
54. **Connecticut Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
55. **Delaware Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
56. **Delaware Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
57. **District of Columbia Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
58. **District of Columbia Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
59. **Florida Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.



60. **Florida Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
61. **Georgia Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
62. **Georgia Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
63. **Hawaii Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
64. **Hawaii Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
65. **Idaho Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
66. **Idaho Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
67. **Illinois Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
68. **Illinois Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
69. **Indiana Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
70. **Indiana Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
71. **Iowa Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
72. **Iowa Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
73. **Kansas Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
74. **Kansas Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
75. **Kentucky Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
76. **Kentucky Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
77. **Louisiana Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
78. **Louisiana Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
79. **Maine Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
80. **Maine Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
81. **Maryland Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
82. **Maryland Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
83. **Massachusetts Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
84. **Massachusetts Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
85. **Michigan Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
86. **Michigan Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
87. **Minnesota Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
88. **Minnesota Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
89. **Mississippi Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
90. **Mississippi Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
91. **Missouri Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
92. **Missouri Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
93. **Montana Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
94. **Montana Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
95. **Nebraska Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
96. **Nebraska Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
97. **Nevada Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
98. **Nevada Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
99. **New Hampshire Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
100. **New Hampshire Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
101. **New Jersey Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
102. **New Jersey Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
103. **New Mexico Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
104. **New Mexico Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
105. **New York Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
106. **New York Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
107. **North Carolina Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
108. **North Carolina Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.



109. **North Dakota Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
110. **North Dakota Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
111. **Ohio Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
112. **Ohio Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
113. **Oklahoma Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
114. **Oklahoma Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
115. **Oregon Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
116. **Oregon Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
117. **Pennsylvania Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
118. **Pennsylvania Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
119. **Rhode Island Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
120. **Rhode Island Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
121. **South Carolina Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
122. **South Carolina Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
123. **South Dakota Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
124. **South Dakota Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
125. **Tennessee Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
126. **Tennessee Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
127. **Utah Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
128. **Utah Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
129. **Vermont Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
130. **Vermont Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
131. **Virginia Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
132. **Virginia Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
133. **Washington Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
134. **Washington Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
135. **West Virginia Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
136. **West Virginia Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
137. **Wisconsin Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
138. **Wisconsin Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
139. **Wyoming Coefficient for Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.
140. **Wyoming Coefficient for Non-Standard Hours** for Job Order Contracting as listed in RSMeans Cost Data Book.



## REQUIRED FORMS CHECKLIST

(Please check (✓) the following)

- Reviewed/Completed: **Proposer's Acceptance and Agreement**

### PROPOSAL FORMS PART 1: COMPLIANCE FORMS

- Reviewed/Completed: **Proposal Acknowledgements**
- Reviewed/Completed: **Felony Conviction Disclosure**
- Reviewed/Completed: **Resident/Nonresident Certification**
- Reviewed/Completed: **Debarment Certification**
- Reviewed/Completed: **Vendor Employment Certification**
- Reviewed/Completed: **No Boycott Verification**
- Reviewed/Completed: **No Excluded Nation or Foreign Terrorist Organization Certification**
- Reviewed/Completed: **Historically Underutilized Business Certification**
- Reviewed/Completed: **Construction-Related Goods and Services Affirmation**
- Reviewed/Completed: **Deviation and Compliance**
- Reviewed/Completed: **Vendor Consent for Name Brand Use**
- Reviewed/Completed: **Confidential/Proprietary Information**
- Reviewed/Completed: **EDGAR Vendor Certification**
- Reviewed/Completed: **Compliance Forms Signature Page**

### PROPOSAL FORMS PART 2: VENDOR INFORMATION FORMS

- Reviewed/Completed: **Vendor Business Name**
- Reviewed/Completed: **Vendor Contact Information** (*complete in electronic proposal submission system*)
- Reviewed/Completed: **Federal and State/Purchasing Cooperative Experience**
- Reviewed/Completed: **Governmental References**
- Reviewed/Completed: **Company Profile**
- Reviewed/Completed: **Texas Regional Service Designation** (*complete in electronic proposal submission system*)
- Reviewed/Completed: **State Service Designation** (*complete in electronic proposal submission system*)
- Reviewed/Completed: **National Purchasing Cooperative Vendor Award Agreement** (*Vendors serving outside Texas only*)
- Reviewed/Completed: **Local/Authorized Seller Listings**
- Reviewed/Completed: **Proposal Invitation Questionnaire with Project History and Letters of Recommendation**
- Reviewed/Completed: **Vendor Request to Self-Report BuyBoard Purchases** (*Optional*)
- Reviewed/Completed: **Proposal Specifications with Coefficient Factor(s)** (*complete in electronic proposal submission system*)



## PROGRAM REQUIREMENTS FOR JOB ORDER CONTRACT

### Proposal Invitation No. 681-22 – Job Order Contracting for Energy Conservation and Efficiency

#### PURPOSE

The intent of this Proposal Invitation is to establish a contract with highly qualified Vendor(s) providing general job order contracting services focused on energy efficiency and conservation for facilities. (This Proposal Invitation is not for, and no awarded contract hereunder shall be deemed to be, an Energy Savings Performance Contract as defined and governed by Texas Education Code §44.901, Texas Local Government Code Chapter 302, or similar laws. Further, any contract award under the Proposal Invitation shall not include services that are required to be procured under the Professional Services Procurement Act (Chapter 2254 of the Texas Government Code) including, without limitation, architecture and professional engineering services.

As set forth in the Proposal Invitation, all energy conservation and efficiency job order contracting services under an awarded Contract **shall be limited** to the following areas (including incidental, related services) and the related Unit Price sections in the Unit Price Book identified in the Proposal Specifications:

1. Automatic energy control systems, including related software; that are intended for energy efficiency and conservation; and
2. Heating, ventilating, or air-conditioning system modifications or replacements that are intended for the reduction of energy or water consumption; and
3. Insulation of a building structure and systems within the building; that are intended for energy efficiency and conservation; and
4. Lighting fixtures and lighting upgrades that are intended for the increase in energy efficiency; and
5. Storm windows or doors, caulking or weather stripping, multi-glazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, or other window or door system modifications that are intended for the reduction of energy consumption; and
6. Water-conserving fixtures, appliances, and equipment or the substitution of non-water using fixtures, appliances, and equipment that are intended for the reduction of energy or water consumption; and
7. Other services which are incidental, related services to items 1-6.

Please note that roofing system upgrades and replacements are **not** included within the scope of this Proposal Invitation or any resulting Contract. Core work under the Contract shall be limited to the sections listed in this proposal Invitation and found in the Gordian Facilities Construction Cost Data Book with RSMMeans Data. Other tasks shall be permitted only when incidental/related to the core work.

The purpose of this Program Requirements document is to provide an overview of the program requirements for the administration of the Job Order Contract, a Contract designed to provide Cooperative Members with a flexible and responsive contractual capability for work of a recurring nature and of indefinite time, type or quantity in support of their real property maintenance and construction activities.

The requirements set forth in this Proposal Invitation are minimum requirements. To the extent of any conflict between these requirements and requirements contained in any Member Construction Contract (including any Job Order), the stricter requirements on the Vendor shall apply. Subject to Paragraph D.2 of the General Terms and Conditions, in the event of differing but equally stringent requirements, the Member Construction Contract shall govern over the requirements in the Proposal Invitation.



## **JOB ORDER CONTRACT**

A Job Order Contract is a contract for the maintenance, repair, alteration, renovation, remediation, or minor construction of a facility if (1) the work is of a recurring nature but the delivery times are indefinite; and (2) indefinite quantities and orders are awarded substantially on the basis of pre-described and pre-priced tasks. The Job Order Contract shall consist of a collection of proposed facilities-related projects. Each project shall encompass detailed task specifications encompassing maintenance, repair, alteration, renovation, remediation, or minor construction to facilities.

The determination of the appropriateness of the use of a Job Order Contract for any particular project shall be the responsibility of the Cooperative member. The Cooperative shall not be involved in, or responsible for, any such determination.

## **UNIT PRICE BOOK AND PROPOSER'S COEFFICIENT**

Contractual unit prices for a Job Order Contract will be established by requiring Proposers to propose one or more coefficients or multipliers to be applied to a unit price book. For this Proposal Invitation, the unit price book will be the current calendar year issue of the **Gordian Facilities Construction Cost Data Book with RSMMeans Data** with updates as applicable ("Unit Price Book").

This Proposal Invitation is for job order contracting services focused on energy efficiency and conservation. Core work under the Contract shall be limited to the following sections in the **Gordian Facilities Construction Cost Data Book with RSMMeans Data**. Other tasks shall be permitted only when incidental/related to the core work.

- **GENERAL REQUIREMENTS**; Section No. 01 11 to 01 93
- **THERMAL AND MOISTURE PROTECTION**; Section No. 07 01 to 07 27
- **PLUMBING**; Section No. 22 01 to 22 11; 22 42 to 22 47
- **HEATING VENTILATION AIR CONDITIONING**; Section No. 23 05 to 23 84
- **ELECTRICAL**; Section No. 26 01 to 26 71

Proposed coefficients shall be applied to the Unit Price Book for all tasks other than non-pre-priced work as described in these Program Requirements.

The Proposer's Coefficient is the price multiplier that the Vendor proposes to be applied to the Unit Price Book ("Proposer's Coefficient"). Much of the work may be performed during normal operating hours. However, as is typical with educational or other public facilities work, other work hours may be necessary. Vendors submitting a Proposal are required to submit Proposer's Coefficients for both Standard and Non-Standard Hours as defined in this Proposal Invitation.

After a contract award, each Job Order under the Contract will be broken down into individual tasks of work, and a total price will be developed based upon the Unit Price Book rate and the Proposer's Coefficient. The price of the work in a Job Order will be determined by multiplying the Unit Price Book rates for individual tasks of work listed in the Job Order by the Proposer's Coefficient.

*For example, if the labor unit price for electrical installation of one hundred square feet of electrical conduit is \$25.00 (after city cost adjustment) and the Proposer's Coefficient is 0.85, the Job Order price would be \$21.25 ( $\$25.00 \times 0.85 = \$21.25$ ). Vendors shall propose a Proposer's Coefficient that is a net decrease from or increase to the "Total Incl. O&P" costs column in the Unit Price Book, and not the "Bare Total" column. The "Total Incl. O&P" shall also be adjusted for the nearest city, and not the national average listed in the Unit Price Book. Proposer's Coefficient shall be carried to two (2) decimal places only.*



## **JOB ORDER, WORK AUTHORIZATION AND PURCHASE ORDER**

A Job Order is the contractual instrument issued by the Cooperative member to the Vendor for a specific project. The Job Order may include only a brief scope of work, or it may include, in part, the Unit Price Book estimate of tasks and quantities of labor, materials, and equipment to do the work, draft or sealed plans and specifications designed by professionals or outside consultants and required project timelines. The Job Order is issued and approved upon agreement between the Cooperative Member, the Cooperative member's Design Professional, when applicable, and the Vendor, on the scope of work, performance time, and the price for that work. The individual Job Order becomes in effect a fixed-price lump sum contract when all required authorizations and signatures are obtained (Cooperative member and Vendor) and the appropriate authority for the Cooperative member has approved the work and price. At this point, the Job Order becomes an authorization to perform the work ("Work Authorization") and the work may begin. A Purchase Order for the Work Authorization is issued by the Cooperative member soon thereafter.

The Cooperative Member's representative will contact the Vendor directly of any Job Order issued. The Vendor's representative shall respond to the Cooperative member within five working days by meeting with the Cooperative member's representative and the Cooperative member's Design Professional, if applicable, to conduct a scope validation site visit and conference. During this meeting, the following will be discussed and established:

- Site investigation;
- Methods and alternatives for accomplishing work per RSMean estimate, plans, and specifications;
- Detailed scope of the work, definitions, and refinement of tasks and quantities as required;
- Time requirements for completion of the work, and job-site availability; and
- Any other appropriate discussion items regarding the work as determined by the Cooperative member.

After the scope validation site visit and conference with the Vendor and Design Professional, if applicable, the Cooperative member representative will provide the Vendor with a copy of the Job Order to examine the scope of work, plans and specifications, and any special instructions or conditions that may exist. The Vendor is responsible for verifying tasks and defining quantities. The Vendor shall then formally respond to the Job Order. The Vendor shall review the project and be fully prepared to discuss all aspects of the Job Order and shall call the Cooperative member representative to schedule a price negotiation meeting based on the initially estimated or budgeted dollar value of the project established at the job walk. This meeting shall include the Vendor, Cooperative member representative, and any Design Professional selected by Cooperative member at a minimum. It may include others such as the Job Order Contract Manager, if applicable, or others as may be deemed appropriate to any given Job Order.

After review of the Vendor's Job Order revisions (if any), the Cooperative member representative shall recommend approval or disapproval of the Job Order as presented or proceed to negotiate any items in question. Negotiations of individual Job Orders are intended and expected to be expedient quality control checks of price proposals received. They are not intended to be detailed analysis of individual line items. They are not intended to be labor intensive nor time consuming. The Vendor is expected to provide fair and reasonable pricing for the work involved based upon the Unit Price Book in its initial proposal for each Job Order. Vendor behavior contrary to this philosophy shall be reported to the Cooperative.

Upon acceptance of the Job Order by both parties, the Cooperative member representative shall seek all required approvals from the Cooperative member's governing body and all required signatures for the Work Authorization for the Job Order. Once the Work Authorization is properly approved and executed, the Vendor shall begin work as per the date ranges specified in the approved Job Order. The Purchase Order from the Cooperative member shall follow but is not required to begin the Work. The Cooperative member representative shall schedule a pre-construction walk through inspection of all building systems, (i.e. fire alarm, intercom, data, telephone, etc.) to include appropriate staff, personnel, Design Professionals, if applicable, and Vendor to ascertain and document existing systems conditions before work begins. Vendor is responsible for any damage in any work area which is



not noted at the time of the pre-construction walk through as existing damage. The Cooperative member representative shall, in conjunction with the Cooperative member's Design Professionals, if applicable, perform the contract administration associated with the Job Order until completion of the work, including final inspection and acceptance within the time frame designated on the Job Order.

### **NON-PRE-PRICED WORK**

Non-pre-priced work consists of those work items that are not listed line items in the Unit Price Book. Any non-pre-priced work will be categorized and addressed as follows:

Tasks that are not specifically included in the Unit Price Book but are within the basic intent and general scope of the Contract shall use the nearest fair and reasonable Unit Price Book description and cost which can be agreed to by the Vendor and the Cooperative member which satisfies the fit, form and function philosophy of the Job Order Contract concept. The agreed-upon Unit Price Book rate will then be used in conjunction with the applicable Proposer's Coefficient when determining price.

Tasks which are included in the Unit Price Book but differ materially more from those ordinarily encountered shall be adjusted in material cost prior to issuance of the final Job Order and Work Authorization. Vendor must submit cost documentation prior to issuance of the final Job Order and Work Authorization to exercise this optional adjustment. The Vendor must provide justification and descriptive and supportive documentation. Unless otherwise agreed by the Cooperative member in writing in advance, a minimum of three quotes shall be provided. Written approval must be received from the Cooperative member to exercise this option. This is required to ensure consistency in application in all Job Orders and Work Authorizations regardless of personal or departmental differences or perspectives.

If materials specified by the Job Order for a specific task exceed the unit material bare cost in the Unit Price Book by more than 1.5 times, the Vendor may request adjustments of the bare cost. In these instances, copies of at least three competitive materials vendor quotations must be submitted to the Cooperative member to substantiate material costs in excess of the Unit Price Book. Vendor may propose only two such quotes subject to prior approval by the Cooperative member. The Vendor shall be required to provide copies of invoices and proof of payment when requested by the Cooperative member. These negotiations must precede the Work Authorization and will not be allowed on a Change Order basis. In these instances, the Vendor shall be reimbursed at 10% above the invoice cost unless a different reimbursement value is agreed upon in writing by Vendor and Cooperative Member. All such exceptions for non-pre-priced work require the written approval of the Cooperative member before any work is performed.

An asterisk shall precede any modified task description for non-pre-priced work. Justification, descriptive and supportive documentation must be provided by the Vendor for all non-pre-priced work.

### **TECHNICAL SPECIFICATIONS FOR JOB ORDERS**

A Cooperative member representative(s) may develop plans and specifications necessary for the procurement and implementation of individual Job Orders and Work Authorizations. Vendors shall adhere to all Proposal documents contained or referenced in this Proposal Invitation as well as with all plans and specifications developed for individual Job Orders by Cooperative members' in-house or third-party Design Professionals as may be required. It is understood that all references throughout these documents to "Design Professional" shall refer to whoever is the responsible professional in charge of the work for the Cooperative member as determined by the Cooperative member, whether that be the Cooperative member's architect, engineer, or the Cooperative member's staff as may be appropriate to any individual Job Order or Work Authorization.





*The scope of services in this Proposal Invitation and any resulting contract award do not include services that are required to be procured under the Professional Services Procurement Act (Chapter 2254 of the Texas Government Code) including, without limitation, architecture and professional engineering services.*

### **JOB ORDER PRICING VERIFICATION**

The Vendor shall provide all information reasonably requested by the Cooperative member and/or Cooperative to verify Vendor's job order pricing is in accordance with the Unit Price Book and applicable coefficient. This shall include, but is not limited to, access to view Unit Price Book data.

### **MODIFICATION TO JOB ORDERS**

If differing site conditions are encountered during execution of the Job Order, or there is a desired change to the quantity or quality of work by the Cooperative member, then a modification or supplement to the Job Order by way of Change Order will be required. It is the sole responsibility of the Cooperative member representative to obtain authorization for a Change Order to a Job Order after Work Authorization. Change Order amounts shall be generated utilizing the Unit Price Book and applicable Proposer's Coefficient as the sole source for pricing. If a Change Order involves negotiation with the Vendor, all negotiations must be completed on a timely basis, not to exceed within 3 working days from the time of discovery of the need, unless otherwise agreed upon by Cooperative member and Vendor. All agreements resulting from such negotiations will be memorialized in the Change Order.

For purposes of a Change Order, credits for Pre-priced and Non Pre-priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Coefficient Factors. The result is that a credit for work that has been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original Job Order Price Proposal.

For the purpose of issuing modifications to a Job Order, three typical circumstances are anticipated:

- Differing site conditions
- Increased scope of work
- Decreased scope of work

Change Orders shall only be permitted to the extent allowed by law. In the event of any Change Order increasing the price for any Job Order, the Vendor shall obtain all additional payment and performance bonds as required by law and/or any applicable Member Construction Contract.

### **INDEFINITE QUANTITY; SURVIVAL**

This Proposal Invitation is for work of an indefinite-quantity for the supplies and services specified and effective for the time period stated in this Contract. Delivery or performance shall be made only as authorized by Job Orders issued and approved in accordance with the terms of the Contract. There is no limit on the number of Job Orders that may be issued, but the dollar amount may be limited by the Cooperative member's governing body or any applicable state statute.

Any Job Order issued during the Contract term and not completed within that period shall be completed by the Vendor within the time specified on that Job Order. In such event, the Contract shall govern the Vendor's and the Cooperative member's rights and obligations with respect to such Job Order to the same extent as if that Job Order were completed during the Contract term.



## **USE OF SITE**

The Cooperative member shall make each project site accessible to the Vendor as necessary for the performance of work under any Job Order under the Contract. This shall not be interpreted as giving Vendor exclusive rights of occupancy for work tasks under the Job Order. The Cooperative member shall have access to all project site facilities at all times. Work shall be limited to the described area on the site plan or as otherwise set forth in the Job Order. Use of the project site shall be coordinated by the Vendor with the Cooperative member's representative. All sign in/out policies and other policies of the Cooperative member regarding use of the Cooperative member's facilities whether or not included within the project site are applicable to Vendor and Vendor's subcontractors and sub-subcontractors as prescribed by the Cooperative member while on Cooperative member's property. Vendor shall not perform work on any dates or at any times at any project site prohibited by the Cooperative member.

## **HOURS OF WORK**

Vendors shall be prepared to pursue the contracted tasks during the standard working hours of 7:00 a.m. to 5:00 p.m., Monday through Friday ("Standard Hours"). Hours other than Standard hours shall be considered non-standard hours ("Non-Standard Hours"). The Vendor may elect, at his own option, to work Non-Standard Hours only if:

- Vendor submits a request to the Cooperative member representative in writing at least two working days in advance providing the dates and specific times of the Non-Standard Hours during which the Vendor wishes to perform work;
- There is no additional cost to Cooperative member;
- An authorized representative of the Cooperative member approves the request in advance in writing; and
- Vendor agrees to any special conditions imposed by Cooperative member as are set forth in the approval document.

Any work performed during Non-Standard Hours, at Vendor's own option, shall be subject to the Proposer's Coefficient for Standard Hours.

Work required by the Cooperative member to be performed at Non-Standard Hours shall be eligible for application of the Proposer's Coefficient for Non-Standard Hours. If this work cannot otherwise be adequately quantified, a percentage of the total Job Order shall be mutually agreed upon between Cooperative member and Vendor to which the Proposer's Coefficient for Non-Standard Hours shall apply for that particular Job Order.

## **REPORTING REQUIREMENTS AND PAYMENTS**

Normally, the Vendor shall only be paid for completed Job Orders, assuming they are of a 30-day construction period or less. In such event, the application for final payment shall be submitted only once all work and the punch list (if applicable) are completed. If the performance period of a Job Order exceeds 30 days, partial payment is authorized, based on the percentage of completion minus a 5% retainage. Vendor shall comply with any and all payment application requirements, reporting requirements, and payment procedures in any applicable Member Construction Contract including any Job Order. Liquidated damages may be agreed upon and assessed if the work, including punch list items, extends beyond the agreed completion date for any Job Order. The amount of any liquidated damages will be the amount(s) set forth in the Member Construction Contract, including any Job Order as applicable. When the work is certified complete by the Cooperative member in accordance with any procedures required by law, by the Member Construction Contract, or by the Cooperative member's own policies and procedures, and when an invoice or payment application is received by the Cooperative member, the Cooperative member will process the invoice or payment application through the Cooperative member's established procedures, including any procedures established in any Member Construction Contract and in accordance with State prompt payment laws.



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The Cooperative member reserves the right to deduct from any payment to Vendor an equitable amount for any damaged or uncorrected work until such time as the Cooperative member deems the work satisfactory. If unfinished work or damaged or uncorrected work remains after the agreed upon Job Order completion date, the Cooperative member reserves the right to have the work completed by others and deduct the cost of that work from any payments to the Vendor on the project. A Cooperative member shall have such other remedies as are set forth in the Contract, including any Member Construction Contract or Job Order as applicable.

The Vendor shall submit a weekly report of activities to each Cooperative member representative for Vendor's assigned Job Order projects. Further, Vendor shall submit a monthly report and meet with the Cooperative member on a monthly basis to review all projects and contract administrative efforts. Detailed updated CPM (construction program management) schedules are required from Vendor with each monthly pay application.



## **GENERAL TERMS AND CONDITIONS**

### **A. General Provisions**

#### **1. Statement of Inclusion/Applicability**

These General Terms and Conditions (“Terms and Conditions”) apply to this Proposal Invitation and the proposing company’s response to this Proposal Invitation. These Terms and Conditions are an integral part of any Contract which is awarded by the Cooperative under this Proposal Invitation any related Cooperative member Purchase Order or construction contract as described in these Terms and Conditions.

#### **2. Organization and Section Titles**

The provisions of these Terms and Conditions are generally organized according to the stages of the procurement process: proposal, evaluation, award, and performance. This organization of and the section titles used in these Terms and Conditions are for convenience and reference only, and in no way define, describe, extend, or limit the scope or intent of the provisions of any section of this document. Unless otherwise stated, any listing of factors or criteria in these Terms and Conditions does not constitute an order of preference or importance.

#### **3. Definitions**

As used in this Proposal Invitation and associated documentation, the following terms have the meanings set out below unless the context requires otherwise, regardless of whether initial capitalization is consistently used. Words used in the singular include the plural, and words used in the plural include the singular. To the extent terms are defined or used differently in different Proposal Invitation documents, substance prevails over form:

“**Awarded Items**” has the meaning set for in section E.3 of the Terms and Conditions.

“**Awarded Pricing**” has the meaning set forth in section E.4 of the Terms and Conditions.

“**BuyBoard®**,” “**the BuyBoard**,” or “**BuyBoard website**” means the internet-based electronic commerce technology provided by the Cooperative Administrator, the Texas Association of School Boards, Inc. (TASB), to enable Cooperative members to purchase awarded goods and services electronically.

“**BuyBoard Administrator**” or “**Cooperative Administrator**” means the Texas Association of School Boards, Inc. (TASB), 12007 Research Blvd, Austin, Texas 78759.

“**Contract**” or “**BuyBoard Contract**” means the contract between the Cooperative and a successful Proposer (Vendor), which gives Vendor the opportunity to serve Cooperative members based on the Cooperative’s acceptance of all or part of the Vendor’s Proposal, and is comprised collectively of the following:

- (a) This Proposal Invitation;
- (b) Vendor’s Proposal;
- (c) Notice of Award issued to Vendor by the Cooperative;
- (d) Purchase Order between a Cooperative member and Vendor; and
- (e) Member Construction Contract. (A Purchase Order and/or Member Construction Contract between a Cooperative member and Vendor shall be deemed part of the Contract for the specific Cooperative member purchase only and for determination of the Service Fee as set forth in these Terms and Conditions. Purchase Order and Member Construction Contract terms shall apply between the Cooperative member and Vendor as to the specific Cooperative member purchase only but shall not alter or affect the Terms and Conditions of the Contract as between the Cooperative in its own right and Vendor.)



**“Cooperative”** means The Local Government Purchasing Cooperative (which may also be referred to as “Texas Cooperative” herein), including when acting by and through the Cooperative Administrator, unless a distinction is made otherwise.

**“Cooperative member”** or **“member”** means a local governmental entity (e.g., school district, city or county) or other governmental entity that is a member of the Cooperative and is eligible to purchase through a governmental purchasing cooperative or interlocal contract. Although not eligible to be a member of the Cooperative, “Cooperative member” as used in these Terms and Conditions may include the Cooperative Administrator’s non-profit entity subscribers when used in relation to a purchase from a non-profit subscriber.

**“Goods”** or **“Products”** (which terms are used interchangeably) means the goods, products, equipment or other commodities and/or services that are the subject of this Proposal Invitation.

**“Member Construction Contract”** means any and all additional written terms, conditions, or instructions, related to construction or construction-related goods or services procured under a Contract awarded pursuant to this Proposal Invitation, which are required by a Cooperative member and accepted by a Vendor. Depending upon the nature of the goods or services and the Cooperative member project for which they are procured, these requirements may include, but are not limited to:

- 1) Conditions and specifications required by the Cooperative member;
- 2) Drawings or project plans produced by the Cooperative member; and
- 3) Change orders or change directives.

**“Proposal Invitation”** means this Proposal Invitation and all associated documentation, including without limitation, these Terms and Conditions and any amendments hereto, additional terms and conditions specific to this Proposal Invitation, instructions, exhibits or attachments, forms, agreements, certifications, item specifications, appendices, and addenda.

**“Proposal”** means Proposer’s complete and correct response to this Proposal Invitation, including all information, forms, agreements, certifications and other documentation required by this Proposal Invitation, properly submitted by Proposer’s duly authorized representative.

**“Proposal Due Date”** means the date and time specified in the Proposal Invitation, or any addenda thereto, by which Vendors are required to submit Proposals for this Proposal Invitation.

**“Proposer”** or **“Vendor”** means the company or firm that submits a Proposal or, depending on the context, the proposing company to which the Cooperative awards a Contract under this Proposal Invitation. (For purposes of the forms associated with this Proposal Invitation, “you”, “your”, “I” or “my” refer to Proposer or Vendor, as applicable.)

**“Purchase Order”** means a Cooperative member’s fiscal form or other instrument which is used in making a purchase from Vendor under a Contract. A Purchase Order may include a written or electronic purchase order, record of an online order, record of a purchasing card (P card) purchase, or any other record or instrument used by a Cooperative member to document a Cooperative member’s authorized commitment to purchase awarded goods or services from a Vendor under a Contract.

**“Vendor Invoice”** means Vendor’s billing form or other instrument, written or electronic, documenting charges for goods or services delivered to the Cooperative member under a Purchase Order under a Contract.



#### **4. Construction and Construction-Related Goods or Services**

This Proposal Invitation includes construction or construction-related goods or services, such as the installation of equipment, limited site preparation work, or alterations to existing buildings or facilities, which collectively are referred to in these Terms and Conditions as "construction-related services." It is not the intent of the Cooperative for these Terms and Conditions to represent and reflect the complete agreement between a Cooperative member and a Vendor with respect to a specific procurement for construction-related services under a BuyBoard Contract awarded pursuant to this Proposal Invitation.

A Cooperative member procuring construction-related services under a BuyBoard Contract will likely negotiate and require Vendor to enter into a Member Construction Contract with additional terms that are specific to the Cooperative member's procurement or project. For example, a Cooperative member's architect and/or engineer (selected outside of a BuyBoard Contract) may prepare plans and technical specifications for tasks included in the construction-related services. Additionally, a Cooperative member may require compliance with legal requirements applicable to construction-related services, including certain bonding requirements and prevailing wage requirements. The Member Construction Contract terms as agreed to by the Cooperative member and Vendor become a part of the BuyBoard Contract awarded under this Proposal Invitation, subject to the limitations of Section D.2 (Applicable Terms and Conditions; Member Construction Contracts and Ancillary Agreements).

Note: As specified in section B.10 (Certain Professional Services Excluded) of these Terms and Conditions, a Contract awarded under this Proposal Invitation does not include architecture, engineering or other services that must be procured in accordance with the Texas Professional Services Procurement Act (Chapter 2254 of the Texas Government Code), and therefore a Member Construction Contract entered into with a Vendor pursuant to the BuyBoard Contract may not include such services. To the extent that an Awarded Item includes a construction component that requires architecture or engineering services, a Cooperative member must procure such services outside the BuyBoard Contract through a separate procurement process.

### **B. Proposal Requirements**

#### **1. Specifications**

Unless otherwise specified, the specifications are intended to be non-proprietary, and should be construed as such.

The apparent silence of the specifications as to any detail, or the apparent omission from any specification of a detailed description concerning any point, will be interpreted to mean that only the best commercial practices will prevail, and the specification will be construed accordingly.

NOTE: Unless a different time period is stated in the General Information document of this Proposal Invitation, if Proposer discovers or suspects an error in any item specification in this Proposal Invitation, including that the specification is proprietary where not intended, Proposer must notify the Cooperative Administrator of the error in writing at [bids@buyboard.com](mailto:bids@buyboard.com) immediately, but in no event later than the 10<sup>th</sup> business day before the Proposal Due Date.

#### **2. Proposal Pricing**

Pricing must be provided in the form required by the specifications and in accordance with the Proposal Invitation.

The specifications require coefficients to be applied to a unit cost book. Proposers must provide pricing in the form required by the specifications and note any deviations in accordance with B.4 (Deviations from Item Specifications or General Terms and Conditions).

Proposer's pricing must be equal to or better than pricing Proposer offers other similarly situated customers under similar circumstances, including those offered to other purchasing cooperatives. Pricing that is not considered equal or better could result in the Proposal being determined non-competitive and not considered for award.



Unless specified otherwise in this Proposal Invitation:

- (a) A "cost plus" Proposal will not be accepted;
- (b) Proposer will not include freight, transportation and delivery charges or costs, or sales tax in Proposal pricing. (Freight, transportation and delivery charges, if applicable, are to be pre-paid by the awarded Vendor and, subject to section E.5 (Packaging, Transportation, and Delivery) of these Terms and Conditions, included as a separate item on the invoice to the ordering Cooperative member);
- (c) Proposal pricing must include the service fee due pursuant to section E.12 (Service Fee) of these Terms and Conditions; and
- (d) Proposal pricing must be firm for acceptance and the Cooperative's period for acceptance will be at least 120 calendar days from the Proposal Due Date.

Proposal pricing must not include the cost of engineering, architectural or other services that are required to be separately obtained by a Cooperative member under the Texas Professional Services Procurement Act (Chapter 2254 of the Texas Government Code) or other applicable law.) Coefficients must remain firm for the full Contract term.

### 3. Quality

Unless otherwise indicated in this Proposal Invitation, proposed products must be new and in first class condition, and must be warranted in the same manner and to the same extent as normally provided to other customers of Proposer. Additionally, proposed products must conform to the highest standards of manufacturing practice, including, for all tangible goods included in this Proposal Invitation, containers suitable for shipment and storage. Unless otherwise specified, "factory seconds," "refurbished", or otherwise inferior items are not acceptable. All services must comply with applicable industry standards.

### 4. Deviations from Item Specifications or General Terms and Conditions

Other than a deviation submitted in writing with the Proposal and **accepted by the Cooperative**, the Cooperative will hold Vendor accountable to the Cooperative and Cooperative members to perform in strict accordance with these Terms and Conditions and the item specifications as written. (For requirements for Member Construction Contracts and ancillary agreements between Cooperative members and Vendors for specific purchases, see section D.2 (Applicable Terms and Conditions; Member Construction Contracts and Ancillary Agreements).)

Vendor must clearly note and explain in detail any and all limitations, exceptions, qualifications, special conditions, or other deviations (collectively "deviations") from these Terms and Conditions or any of the item specifications in the Proposal on the Deviation and Compliance form (or an attachment thereto) at the time the Proposal is submitted. Deviations must be specific to these Terms and Conditions or the item specifications and clearly identify the specific section or item to which the deviation applies. The Cooperative shall not be deemed to have accepted, and a Contract shall not be subject to, any term or condition included in Vendor's Proposal which differs from these Terms and Conditions unless Vendor has specifically identified the deviation on the Deviation and Compliance form and the deviation is accepted by the Cooperative.

The submission of a deviation or deviations may place Vendor at a competitive disadvantage or otherwise prevent the Cooperative from considering the Proposal on the affected item(s).

**The following Terms and Conditions are not subject to deviation. Any attempted deviation by Vendor to such Terms and Conditions, whether directly or indirectly, shall be deemed rejected by the Cooperative and, unless otherwise withdrawn by Vendor, may result in Vendor's Proposal being rejected in its entirety:**

- (a) Section B.9, Requirements of the Texas Public Information Act; Confidential Information;
- (b) Section B.12, Certifications;
- (c) Section D.2, Applicable Terms and Conditions; Member Construction Contracts and Ancillary Agreements;
- (d) Section E.6.b, Payments;
- (e) Section E.11, BuyBoard Vendor Information and Reporting of Cooperative Member Purchases
- (f) Section E.12, Service Fee;



- (g) Section E.13, Disclaimer of Warranty and Limitation of Liability;
- (h) Section E.14, Sales Tax;
- (i) Section E.15, Use of BuyBoard Logo and Trade Name;
- (j) Section E.16, Indemnification;
- (k) Section E.17, Intellectual Property Infringement;
- (l) Section E.18, Remedies for Default and Termination of Contract;
- (m) Section E.19, Force Majeure;
- (n) Section F., Miscellaneous, including all subsections (F.1-F.12) thereto.

**Further, any deviation by Vendor which, directly or indirectly, seeks to add terms or requirements substantively similar to the following shall be deemed rejected by the Cooperative and, unless otherwise withdrawn by Vendor, may result in Vendor's Proposal being rejected in its entirety:**

- (a) Any deviation seeking to supersede these Terms and Conditions with Vendor's own agreement form, standard agreement, or terms and conditions;
- (b) Any deviation seeking to require the Cooperative, Cooperative Administrator, or any Cooperative member to indemnify or hold harmless Vendor.

The Cooperative may, in its sole discretion, seek clarification from and/or communicate with Vendor(s) regarding any submitted deviation(s), consistent with general procurement principles of fair competition. The Cooperative reserves the right to accept or reject a proposal based upon any submitted deviation.

#### **5. Addenda**

Any interpretation, correction or change to this Proposal Invitation will be made by written addendum, and updated information contained in an addendum will prevail over the information contained in the original Proposal Invitation or a previous addendum. The Cooperative, by and through the Cooperative Administrator, is the sole authority for the issuance of any addendum, and any communication related to this Proposal Invitation that is not from the Cooperative is invalid. Although the Cooperative may provide electronic notification when an addendum has been issued and the changes will be flagged, it is Vendor's responsibility to monitor the BuyBoard vendor website for possible addenda and incorporate any posted addendum into the Proposal. Vendor must acknowledge each addendum in accordance with the instructions accompanying the addendum.

#### **6. Samples *[Intentionally omitted.]***

#### **7. Proposal on All or Certain Items; Service Regions**

Unless otherwise specified, Vendor may propose on any or all items. Vendor should answer all questions related to each item on which Vendor wishes to propose and indicate "No Bid" for those items on which Vendor does not wish to propose. Failure to complete any item in the specifications will be deemed a no bid on that item. The Cooperative will consider items individually and make awards on each item independently, except for related items for which compatibility will be an element of consideration. In such cases, small groups of items may be considered as a unit.

Vendor's Proposal shall specify the regions and/or states that Vendor proposes to serve by completing the appropriate Proposal forms. Vendor shall specify only those regions or states for which Vendor is authorized either under applicable law and/or by the manufacturer to sell the proposed products. If Vendor proposes multiple products, and the regions or states which the Vendor is able to serve and proposes to serve differ by product, Vendor must specify the specific regions or states by product in its Proposal. **A Vendor may not select a region or state in its Proposal where Vendor is unable or unauthorized to sell a proposed product. If it is determined that a Vendor is unable, unauthorized, or refuses to provide any awarded product(s) or service(s) in a region or state specified in Vendor's Proposal, such inability, lack of authorization, or refusal shall be an event of default and subject to all remedies up to and including termination of Vendor's Contract.**





## 8. "All or Nothing" Awards

Unless otherwise indicated in this Proposal Invitation, "all or nothing" Proposals are **not** acceptable and will be rejected. Vendor must be willing to accept a partial award for any combination of the items or services proposed and must be willing to share the business with any other successful Proposers.

## 9. Requirements of the Texas Public Information Act; Confidential Information

### (a) Vendor Compliance.

**The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Proposal Invitation and any awarded Contract, and Vendor agrees that the Contract can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.**

Pursuant to Texas Government Code Sections 552.371 and 552.372, to the extent the Contract or any Purchase Order or Member Construction Contract thereunder has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by a governmental body or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by a governmental body in a fiscal year of the governmental body, Vendor shall:

- 1) preserve all contracting information, as defined in Texas Government Code Section 552.003(7) ("Contracting Information"), related to the Contract or any Cooperative member Purchase Order or Member Construction Contract thereunder as provided by the records retention requirements applicable to the governmental body for the duration of the Contract (including any Purchase Order or Member Construction Contract thereunder);
- 2) promptly provide to the Cooperative or Cooperative member, as applicable, any Contracting Information related to the Contract that is in the custody or possession of Vendor on request of the Cooperative or Cooperative member; and
- 3) on completion of the Contract (including any Purchase Order or Member Construction Contract thereunder), either:
  - (A) provide at no cost to the Cooperative or Cooperative member, as applicable, all Contracting Information related to the Contract (including any Purchase Order or Member Construction Contract) that is in the custody or possession of Vendor; or
  - (B) preserve the Contracting Information related to the Contract (including any Purchase Order or Member Construction Contract thereunder) as provided by the record retention requirements applicable to the Cooperative or Cooperative member, as applicable.

The Cooperative may not accept a Proposal or award a Contract to a Vendor that the Cooperative has determined has knowingly or intentionally failed to comply with Texas Government Code Chapter 552, Subchapter J, in a previous Proposal or Contract unless the Cooperative determines and documents that Vendor has taken adequate steps to ensure future compliance with the requirements of said Subchapter.

### (b) Confidential/Proprietary Information.

**Proposer must clearly identify information in the Proposal that Proposer considers proprietary or confidential by completing the Confidential/Proprietary Information form. Further, for any other information provided by Vendor to the Cooperative after Contract award (updated catalogs or pricelists, Vendor information, etc.), Vendor shall clearly mark and identify any information that Vendor considers proprietary or confidential. The Cooperative will treat such information as confidential only to the extent allowable under the Texas Public Information Act (Chapter 552 of the Texas Government Code) or similar disclosure law.**



If Vendor fails to properly identify information that the Vendor considers proprietary or confidential, the Cooperative shall have no obligation to seek protection of such information from public disclosure should a member of the public or other third party request access to the information under the Texas Public Information Act or similar disclosure laws. **The Cooperative and its Administrator will not be responsible for Vendor's failure to clearly identify information Vendor considers confidential or proprietary.** Vendor may be notified of a third-party request for information that Proposer has identified in the Confidential/Proprietary Information form as proprietary or confidential when required by the Texas Public Information Act or similar disclosure law.

By submitting a Proposal, Vendor acknowledges that the Cooperative and the Cooperative Administrator will disclose information when required by law, even if such information has been identified herein as information Vendor considers confidential or proprietary.

#### **10. Certain Professional Services Excluded**

Neither this Proposal Invitation nor any Contract includes services that are required to be procured under the Professional Services Procurement Act (Chapter 2254 of the Texas Government Code), including without limitation architecture and professional engineering services.

#### **11. Withdrawal or Modification of Proposal**

Vendor may withdraw or modify a submitted Proposal **prior to the Proposal Due Date and time** specified in this Proposal Invitation. A Proposal may be withdrawn only in strict accordance with this section.

**Electronic Proposals Submissions:** A Proposal submitted electronically through a website designated by the Cooperative for submission of electronic proposals may be withdrawn or modified prior to the Proposal Due Date and time through the same electronic proposal submission website. Vendor's login to the electronic proposal submission website shall be used to verify Vendor's identity. Vendor shall be solely responsible for ensuring only authorized use of its login, following all website instructions, and ensuring that the Proposal is properly withdrawn or modified prior to the Proposal Due Date and time.

**Hard Copy Submissions:** If a Vendor submitted a Proposal in hard copy electronic format via mail or in person, rather than electronic submission through the designated website, Proposer must submit a written request to the Cooperative Administrator to withdraw the Proposal. The request to withdraw must be signed by an individual authorized to enter into contracts on Vendor's behalf and indicate the individual's title. If the Cooperative Administrator has any question or doubt regarding Vendor's identity or the identity of its Proposal, withdrawal will not be allowed. If the Cooperative Administrator, decides to allow the withdrawal, Vendor's duly authorized representative may be required to complete and sign a written receipt satisfactory to the Cooperative Administrator before the proposal will be released. The decision of the Cooperative Administrator relating to matters concerning withdrawal of a Proposal is final.

A Vendor may resubmit a withdrawn Proposal, or submit a new Proposal, up until the Proposal Due Date and time, provided any new submission meets the requirements of this Proposal Invitation. If Vendor resubmits a Proposal that was withdrawn and makes any change to any document in the Proposal package, the change must be made in accordance with the Cooperative's instructions for Proposal submissions, and Vendor will be deemed to have authorized such change.

**Proposals that are in the Cooperative's possession (including Proposals submitted through an electronic proposal submission website designated by the Cooperative) at the Proposal Due Date and time shall be deemed final, conclusive, and irrevocable; and no Proposal will be subject to withdrawal, amendment, or correction by a Vendor after the Proposal Due Date and time specified in this Proposal Invitation.** However, pursuant to section B.4 (Deviations from Item Specifications or General Terms and Conditions), the Cooperative reserves the right, in its sole discretion, to seek clarification, communicate and resolve issues around deviations that were submitted in a Proposal, consistent with general procurement principles of fair competition.



## 12. Certifications

The Proposer's Acceptance and Agreement and Proposal Acknowledgements forms, which are fundamental to and incorporated into this Proposal Invitation, require Vendor to certify to certain matters. Pursuant to and in accordance with such forms, and in addition to the matters set forth therein, Vendor certifies to the following with respect to this Proposal Invitation, the Proposal, and any Contract awarded under this Proposal Invitation.

### (a) Non-Collusion Certification

Vendor agrees and certifies to the following, and understands that the penalty for violating this non-collusion certification will be the immediate disqualification of Vendor's Proposal or, if the violation is revealed after Contract award, any remedies allowed by law or the Contract including termination of Vendor's Contract:

- 1) Neither Vendor nor any business entity represented by Vendor has received compensation for participation in the preparation of the item specifications or these Terms and Conditions related to this Proposal Invitation;
- 2) The Proposal has been arrived at independently and is submitted without collusion with any other Vendor, with any competitor or potential competitor, or with any other person or entity to obtain any information or gain any special treatment or favoritism that would in any way limit competition or give any Proposer an unfair advantage over any other Proposer with respect to the Proposal;
- 3) Vendor has not accepted, offered, conferred, or agreed to confer, and will not in the future accept, offer, confer, or agree to confer, any benefit or anything of value to any person or entity related to the Cooperative or any of its members in connection with any information or submission related to the Proposal, any recommendation, decision, vote, or award related to the Proposal, or the exercise of any influence or discretion concerning the sale, delivery, or performance of any product or service related to the Proposal;
- 4) Neither Vendor, nor any business entity represented by Vendor, nor anyone acting for such business entity, has violated the Federal Antitrust Laws or the antitrust laws of this State with regard to the Proposal, and the Proposal has not been knowingly disclosed, and will not be knowingly disclosed, to any other Proposer, competitor, or potential competitor prior to the opening of Proposals; and
- 5) No attempt has been or will be made to induce any other person or entity to submit or to not submit a Proposal.

### (b) Certification Regarding Ethics, Fair Competition, and Other Matters

Vendor agrees and certifies to the following:

- 1) Vendor has, or has the ability to obtain, such financial and other resources, including inventories, as may be required to fulfill all the responsibilities associated with the Proposal;
- 2) Vendor has a high degree of integrity and business ethics, and a satisfactory record of performance;
- 3) Vendor is an authorized dealer, distributor, or manufacturer for the products or services offered in the Proposal for each region or state Vendor proposes to serve in the Proposal;
- 4) Vendor has not been notified by any local, state, or federal agency with competent jurisdiction that its standing in any matters whatsoever would preclude it from submitting its Proposal and Vendor would in no other way whatsoever be disqualified to propose or receive any award or Contract related to this Proposal Invitation, and Vendor will comply with any reasonable request from the Cooperative to supply information sufficient to substantiate the foregoing representations;
- 5) Vendor has provided its valid, proper and correct business entity name and information in its Proposal, that such entity is operating in good standing with the proper authority from whatever state or local jurisdiction is required, and Vendor has obtained, and will continue to maintain during the entire term of the Contract, all permits, approvals, or licenses necessary for lawful performance of its obligations under this Contract;
- 6) The prices, prompt payment discount terms, delivery terms, distribution allowances and the quality and/or performance (including warranties) of the product or services offered in the Proposal are and will remain the same or better than those offered Vendor's similarly situated customers under similar circumstances, including those offered through other purchasing cooperatives;
- 7) All pricing offered in the Proposal is and will remain fair and reasonable considering general market pricing for similar goods or services. Vendor has not and will not seek to engage in price gouging or price manipulation including, but not limited to, submitting artificially low pricing in pricelists, catalogs, or other pricing submitted



- with the Proposal or quotes to Cooperative members in an attempt to secure a Contract, Purchase Order, or Member Construction Contract and subsequently attempting to increase such proposed pricing citing market pricing;
- 8) The products and services offered in the Proposal represent the full and complete products and services Vendor seeks to provide if awarded a Contract. If awarded, Vendor will be limited to awarded products and services included in the Proposal and will not seek to sell non-awarded items using the Contract.
  - 9) The Proposal complies with all federal, state, and local laws concerning these types of products or services, and Vendor will continue to comply with any applicable federal, state, and local laws related to Vendor's activities in connection with the Contract;
  - 10) Vendor will comply with any applicable prevailing wage rate requirements under the federal Davis-Bacon or state or local law, including Chapter 2258 of the Texas Government Code;
  - 11) Vendor will maintain, at Vendor's expense, any insurance, including without limitation such workers' compensation insurance as may be required by state or local law or policy, necessary to protect the Cooperative and its members from all claims for bodily injury, death, or property damage that might arise from the performance by Vendor or its employees or its agents of any service under the Contract; however, the existence of such insurance does not relieve Vendor of full responsibility and liability for damages, injury, death, or loss as described or as otherwise provided for by law; and
  - 12) Any false statement contained in the Proposal is a material breach of contract which will void the Proposal or any resulting Contract, and subject Vendor to removal from all proposal lists, and possible criminal prosecution.

**13. Proposal Signatures**

Vendor must submit its Proposal in strict accordance with the Cooperative's instructions, including having an officer duly authorized by Vendor execute the Proposal. By signing, the signatory warrants that he or she has read and agrees to the terms of the Proposal and is authorized to execute same as a legally binding act of Vendor. A facsimile or electronic signature will be deemed an original.

**14. No Reimbursement**

**Vendor understands and acknowledges the Cooperative will not reimburse or pay Vendor for any expenses Vendor incurs in preparing its Proposal or providing additional information required in connection with the Proposal.**

**C. Proposal Evaluation**

**1. General**

A Proposal submitted in accordance with this Proposal Invitation will initially be considered for award; however, initial consideration of a Proposal will not constitute an assessment of its meeting the necessary qualifications, and a Proposal may be disqualified at any time during the evaluation process for failure to meet any other terms or conditions contained anywhere else in this Proposal Invitation.

**2. Best Value Criteria**

The Cooperative evaluates Proposals on the basis of best value to Cooperative members. In evaluating Proposals and determining best value for all Cooperative members, the Cooperative will consider the following criteria:

Best Value Criteria		Maximum Points
1	Price Competitiveness	40
2	Vendor Past Performance	15
3	Vendor Reputation for Goods and Services	15
4	Financial and Technical Resources	10
5	Capability of Servicing Cooperative Members	10
6	Any other relevant factor or requirement listed in this Proposal Invitation	10
<b>TOTAL</b>		<b>100</b>



The Cooperative's evaluation may include Vendor's responses to the forms and other attachments or information included with a Proposal or associated with this Proposal Invitation, including but not limited to Vendor's responses to the Proposal Invitation Questionnaire, as well as any other information at its disposal deemed relevant by the Cooperative in its sole discretion. Only responsive Proposals will be evaluated. Failure to include all required information may result in a Proposal being deemed non-responsive.

As a general matter, the Cooperative seeks to make competitive and indefinite quantity awards to Proposers that give the same or better discounts/pricing than they give their best governmental clients and can provide best value to Cooperative members. Proposers should provide competitive pricing that is the same or better than the pricing provided their best governmental clients. Each Proposal is evaluated on its own merit and determined to be fair and reasonable, including by comparing the price/discounts that Vendor offers other governmental clients.

If this Proposal Invitation requires discount pricing, discount practices may be examined and evaluated, in the Cooperative's sole discretion, based on historical data, sales information, discounts granted to other governmental clients, and/or other market research techniques. The Cooperative may award Contracts to multiple Proposers supplying comparable products or services, also known as a multiple award schedule, or award the Contract to a single Proposer. The Cooperative's decision to make multiple awards or a single award will be based upon the Cooperative's sole discretion regarding the type of award that provides best value to all Cooperative members.

In regard to Vendor past performance, among other factors, the Cooperative may consider a Vendor's breach of contractual obligation on any other active or prior Cooperative contract awarded to Vendor including, but not limited to, nonpayment of service fees by Vendor, its parent company or affiliates and/or Vendor's failure to generate any minimum amount specified in a prior-awarded Cooperative contract.

The Proposal Invitation may also require Proposers to provide certain information in the Proposal Forms for which the Cooperative does not evaluate the Proposer's responses as part of the award criteria set out in this Section C.2. The Cooperative requests such information because it may be relevant to federal, state or local procurement law or other requirements that apply to various Cooperative members. (Cooperative members may also require and request Vendors provide additional certifications and information to meet the Cooperative member's specific procurement requirements prior to making purchases under an awarded Contract.) This information, which will be made available to Cooperative members with respect to awarded Vendors, includes the following:

- (a) Resident/Nonresident Certification;
- (b) Vendor Employment Certification;
- (c) Historically Underutilized Business Certification
- (d) EDGAR Vendor Certification.

### **3. Cooperative Board Decision**

The Cooperative reserves the right to waive any or all irregularities, formalities, or other technicalities and to be the sole and independent judge of quality and suitability of any products or services offered. The Cooperative may accept or reject a Proposal in its entirety or may reject any part of a Proposal without affecting the remainder of that Proposal and may award individual items in this Proposal Invitation in any combination or in any way that provides best value to Cooperative members based on the criteria set out in section C.2 (Best Value Criteria) of these Terms and Conditions. The Cooperative may use all means and information at the collective disposal of the Cooperative, Cooperative Administrator, and Cooperative members to evaluate Proposals. The final decision as to the best overall offer(s), including as to pricing and suitability of the proposed products or services to meet the needs of and provide best value to Cooperative members, rests solely with the Cooperative's Board of Trustees.

The Board's decision may be protested only in accordance with the Board's protest procedure policy, which is available from the Cooperative Administrator upon written request. Pursuant to the Board's protest procedure policy, a protest challenging the terms, conditions or form of notice of this Proposal Invitation and accompanying documentation must be received by the Cooperative no later than 5:00 p.m. CST the fifth business day before the



Proposal opening date, and a protest challenging an award decision, including proposal evaluations, no later than 5:00 p.m. CST the fifth business day after the award is posted on the BuyBoard vendor website.

## D. Contract Award

### 1. Notice of Award and Related Matters

A Proposal is an offer by Vendor to contract with the Cooperative and Cooperative members in accordance with this Proposal Invitation, including without limitation the item specifications and these Terms and Conditions. A Proposal does not become a Contract unless and until the Proposal is accepted by the Cooperative through the issuance of a written Notice of Award to a successful Proposer, whereupon the Contract becomes binding and enforceable. The Contract may then be utilized by a Cooperative member by the member issuing a Purchase Order and/or Member Construction Contract, as defined in section A.3 (Definitions) and further described in section A.4 (Construction and Construction-Related Goods and Services), for the awarded products or services. Vendor must honor all Purchase Orders issued by Cooperative members and Member Construction Contracts entered into pursuant to this Contract during the Contract term in accordance with these Terms and Conditions. The Cooperative may maintain Vendor's contract documents in electronic format for the duration of the Contract term.

The Cooperative reserves the right to allow awarded Vendors to add additional service regions, at the Awarded Pricing, to the Vendor's Contract during the Contract term.

As provided for in detail in section E.11 (BuyBoard Vendor Information and Reporting of Cooperative Member Purchases), all Purchase Orders must be processed through the BuyBoard. All deliveries and financial transactions related to the Purchase Order will occur directly between Vendor and the ordering Cooperative member. As provided for in detail in section E.11(c) (Vendor Invoices), Vendor must provide copies of Vendor Invoices for Cooperative member purchases to the Cooperative Administrator.

### 2. Applicable Terms and Conditions; Member Construction Contracts and Ancillary Agreements

By submitting a Proposal, Vendor specifically agrees that these Terms and Conditions shall apply, subject to any deviations properly submitted by Proposer and **approved by the Cooperative** in accordance with section B.4 (Deviations from Item Specifications or General Terms and Conditions). Following award, Vendor shall not seek to impose on a Cooperative member additional terms, conditions, or ancillary agreements that are inconsistent with, or intended to supersede, the Contract Terms and Conditions. Further, Cooperative members and Vendors do not have the authority to modify these Terms and Conditions.

However, nothing herein shall prevent the Cooperative member and Vendor from negotiating Member Construction Contracts or other additional ancillary terms applicable to a specific purchase or purchases, consistent with the requirements of these Terms and Conditions, including but not limited to:

- (a) Detailed product or service requirements for the specific Cooperative member purchase;
- (b) Product delivery times and requirements for the specific Cooperative member purchase;
- (c) Performance and/or payment bonds from Vendor as may be required by law or policy or deemed necessary or appropriate by the Cooperative member;
- (d) Requirements for Vendor to carry and provide proof of insurance as may be required by law or policy or as deemed necessary or appropriate by the Cooperative member;
- (e) Requirements for background checks at Vendor's expense on Vendor employees who will have direct contact with students or staff, or for other reasons;
- (f) Other requirements applicable to the purchase as may be required by law, local policy, or deemed necessary or appropriate by the Cooperative member.

Any Member Construction Contract or other ancillary terms between a Cooperative member and Vendor must be in writing and signed by a representative of the Cooperative member with all necessary authority to accept the agreement and bind the Cooperative member. All risk of confirming proper authority shall lie with Vendor.



By submitting a Proposal, Vendor understands and acknowledges that Cooperative members are governmental entities, and any provision in any Member Construction Contract or ancillary agreement which requires the Cooperative member to indemnify or hold harmless Vendor, or any other provision not allowed by the laws applicable to the purchasing Cooperative member, shall be void and of no effect. Vendor further acknowledges and agrees that, notwithstanding anything in any Member Construction Contract or ancillary agreement, including a product warranty, to the contrary, the laws applicable to such agreement shall be the laws of the state in which the Cooperative member is located. This provision supersedes any provision in any Member Construction Contract or ancillary agreement to the contrary.

Any attempt by Vendor to deviate from this section in Vendor's Proposal shall be deemed rejected. Further, any attempt by an awarded Vendor to impose terms and conditions on a Cooperative member that are inconsistent with the requirements of this section shall be an event of default under the Contract and subject to all remedies up to and including termination of Vendor's Contract.

**Nothing in any Member Construction Contract or ancillary agreement between a Cooperative member and Vendor shall affect the Terms and Conditions of the Contract as between the Cooperative and Vendor.**

### **3. Piggyback Contract and Other Entity Clause**

It is the Cooperative's intent that other governmental entities throughout the United States, as well as the administrator's nonprofit entity BuyBoard subscribers, have the opportunity to purchase the goods or services awarded under the Contract at the same pricing and according to these Terms and Conditions, subject to applicable state law, through a piggy-back award or similar agreement. To the extent applicable, Vendor must offer and sell the awarded goods and services to such other organizations and entities in accordance with Vendor's Proposal, including without limitation the State Service Designation form and the National Purchasing Cooperative Vendor Award Agreement.

## **E. Contract Performance**

### **1. Contract Term**

**(a) Term.** The term of the Contract is for the initial term stated in this Proposal Invitation, which term begins on the date specified in the Notice of Award. Unless otherwise stated in this Proposal Invitation, the Contract may be renewed for two additional one-year terms as provided for in this section E.1. In the event the Contract term will expire before the Cooperative awards a successor contract for the categories of awarded products or services, the Contract may be extended beyond the expiration date on a month-to-month basis, or such other term as determined by the Cooperative, upon the agreement of the Cooperative and Vendor, provided that the Awarded Pricing does not increase during such extension. A reference to "Contract term" in these Terms and Conditions means the initial term and any renewal term.

**(b) Survival.** The Contract shall govern the Vendor's and the Cooperative member's rights and obligations with respect to any Purchase Order and/or Member Construction Contract issued during the Contract term and afterwards with respect to any Purchase Order and/or Member Construction Contract or purchase bound by the Cooperative member for specified goods or services **before** the Contract award period ended. This includes, but is not limited to, the Vendor's obligations to pay to the Cooperative all applicable service fees as required by section E.12 (Service Fees) of these Terms and Conditions for such Purchase Orders and/or Member Construction Contracts.

**(c) Renewals.** Vendor has no right to or vested interest in a Contract renewal. The Cooperative will evaluate the Contract award prior to the expiration of the then current Contract term (initial or renewal) and reserves the right to not renew the Contract based on factors that may include, but are not limited to, the annual amount of business, Vendor's performance (including, but not limited to, compliance with the Terms and Conditions), and the continued provision of best value to Cooperative members. With respect to annual amount of business, Vendor must generate



the minimum amount specified in the General Information document associated with this Proposal Invitation through the Contract, during both the initial and the first renewal term, or may not be offered a second renewal term. A Vendor's failure to generate this minimum amount may also be considered by the Cooperative as part of Vendor's past performance evaluation on future proposal invitations. A renewal must be agreed to by the Cooperative and Vendor. Vendor must promptly, and before the start of the renewal term, notify the Cooperative in writing if Vendor does not accept a renewal offered by the Cooperative or Vendor will have been deemed to have accepted the renewal.

## **2. Prevailing Wages, Bonding, and Insurance Requirements**

Vendor must comply with any applicable prevailing wage rate requirements under the federal Davis-Bacon and/or state or local law, including but not limited to Chapter 2258 of the Texas Government Code.

Vendor must provide any applicable performance and payment bonds as required by law, including but not limited to Chapter 2253 of the Texas Government Code, or as requested by a Cooperative member.

Vendor must maintain appropriate and sufficient insurance, including without limitation such workers' compensation insurance as may be required by state or local law or policy, necessary to protect Vendor and the Cooperative and its members from all claims for bodily injury, death, or property damage that might arise from the performance by Vendor or its employees or agents of any service under the Contract; however, the existence of such insurance does not relieve Vendor of full responsibility and liability for damages, injury, death, or loss as described or as otherwise provided by law.

## **3. Awarded Items Only May Be Sold; Conformity to Item Specifications**

If awarded a Contract, Vendor may only offer under the Contract those products and services included in Vendor's Proposal and awarded to Vendor by the Cooperative ("Awarded Items"). Any attempt by Vendor to sell items other than Awarded Items under the Contract shall be an event of default under the Contract.

Vendor warrants that the Awarded Items Vendor provides under the Contract will conform to the item specifications and other requirements of this Proposal Invitation (except to the extent and as specifically noted as deviations in Vendor's Proposal), and will be free from all defects in material, workmanship and title. Vendor further warrants that (i) Vendor has obtained, and will continue to maintain during the entire term of the Contract, all permits, approvals, and/or licenses necessary for lawful performance of Vendor's obligations under the Contract; (ii) Vendor will comply with all applicable state, federal and local laws, rules, and regulations in regard to Awarded Items, and (iii) all Awarded Items provided under the Contract meet all applicable legal standards and requirements, including OSHA standards and regulations, and that any electrical items bear the appropriate listing from US, FMRC, NEMA, or UL Laboratories.

If Vendor provides a product that does not conform to an item specification, the ordering Cooperative member may reject the product when delivered and terminate the Purchase Order or Member Construction Contract, as applicable, at no cost or penalty to the member.

If Awarded Items include chemicals or other products that customarily require Material Safety Data Sheets (MSDS), Vendor must include the MSDS with the first shipment of the product to a Cooperative member during the Contract term. Vendor must provide additional MSDSs to Cooperative members upon request, promptly and at no additional cost.

## **4. Awarded Pricing**

Awarded pricing shall be based on the pricing structure as set forth in the Proposal Invitation, submitted in Vendor's Proposal, and approved by the Cooperative ("Awarded Pricing"). Except as provided in this section E.4 or otherwise in this Proposal Invitation, Vendor shall hold Awarded Pricing firm during the Contract term. Coefficients shall remain firm for the full Contract Term and are not subject to change.





In the event Vendor decreases the price of awarded products or services below the Awarded Pricing for Vendor's other customers in similar market circumstances, Vendor must offer such decreased pricing to Cooperative members under the Contract.

Further, Cooperative members may negotiate with Vendor, through the BuyBoard request for quotes (RFQ) function or otherwise, to obtain lower prices for Awarded Items based on volume or other factors. Nothing herein shall prohibit Vendor from offering pricing lower than the Awarded Pricing.

If it is determined that a Vendor has sold Awarded Items to Cooperative members through the Contract at a price higher than the applicable Awarded Pricing, Vendor shall be in default of its Contract and subject to all remedies up to and including termination.

Unless specified otherwise in this Proposal Invitation, the service fee due pursuant to section E.12 (Service Fee) of these Terms and Conditions is included in the Awarded Pricing.

#### **5. Packaging, Transportation, and Delivery**

Unless otherwise provided for in this Proposal Invitation, all tangible goods included in this Proposal Invitation must be packaged in containers that are new, appropriately designed for the product, and sturdy enough to protect the product during loading, transit, unloading, and storage, and be suitably packed to secure the lowest transportation costs. Products for which palletizing is appropriate must be delivered on standard and industry acceptable pallets for the products to be delivered in good, serviceable condition.

Vendor is responsible for paying all freight, delivery, handling and other charges incurred in transporting and delivering products to a Cooperative member, and for the risk of loss until the product is delivered to and accepted by the Cooperative member. Freight, delivery, handling and other charges incurred in transporting and delivering products to a Cooperative member are to be prepaid by Vendor. Vendor may collect the actual amount of such charges after delivery and acceptance, provided that the charges (a) are reasonable, (b) were disclosed to the Cooperative member, if requested, and in all instances in which the charges exceed ten percent (10%) of the total cost of the order, prior to shipment; (c) are itemized and shown separately on the member's invoice; and (d) are supported by appropriate documentation submitted with the invoice.

Except for items that have hidden defects or that do not meet specifications, title and risk of loss to products pass to a Cooperative member upon the member's actual receipt and acceptance of the product at the point and time of delivery. Unless otherwise noted in the Proposal (as a deviation) or provided in the Purchase Order or Member Construction Contract, Vendor must deliver or provide awarded products or services within 10 business days after receipt of a Cooperative member's Purchase Order. Vendor must immediately notify the Cooperative member's primary contact of any anticipated or actual delay and document the notice in writing, and the member may extend the delivery time or cancel the order if the delay is unacceptable. If the Cooperative member has not received notice of the delay as required by this section, the member may, at its discretion, return to Vendor any items received after the due date, at Vendor's expense and without liability or penalty to the member. When the needs of a Cooperative member require immediate response, the right to pick up tangible goods, if part of this Proposal Invitation, on an "over the counter" basis must be available for the majority of the awarded tangible goods. In these circumstances, the Cooperative member's personnel may pick up the products at Vendor's warehouse location. Additionally, a Cooperative member may request emergency delivery, and Vendor must use its best efforts to comply with rush or emergency requests. If Vendor cannot fulfill the emergency delivery requirement, the member may procure the products or services from alternative sources without penalty. Time is of the essence in Vendor's performance of the Contract.



## 6. Packing Lists, Invoices and Payments

### (a) Packing Lists, Vendor Invoices

Packing lists or other suitable shipping documents must accompany each shipment of tangible goods included in this Proposal Invitation and state: (a) Vendor's name and address; (b) Cooperative member's name and address or delivery location; (c) Cooperative member's Purchase Order number; (d) descriptive information identifying the item(s) delivered, including quantity, item number, product code, item description, and total number of containers; and (e) copies of all product warranties for the item(s) delivered. Vendor must submit separate invoices, in duplicate, on each Purchase Order after each delivery. Invoices must (a) contain the information stated above; (b) separately itemize any transportation and delivery charges, and include associated documentation; (c) include a properly signed copy of the delivery receipt; and (d) be mailed directly to the ordering Cooperative member. Unless specified otherwise in this Proposal Invitation, the service fee due pursuant to section E.12 (Service Fee) of these Terms and Conditions is included in the Awarded Pricing and must not be separately itemized in the invoice.

Vendor shall provide copies of Vendor Invoices to the Cooperative in accordance with the requirements of section E.11(c) (Vendor Invoices).

### (b) Payments

Payment by the Cooperative member is due after a Cooperative member's receipt and acceptance of ordered products or services and the documentation identified above, including a complete and correct invoice, in accordance with the Texas Prompt Payment Act (Chapter 2251 of the Texas Government Code). A Cooperative member is not responsible for products delivered or invoiced without a valid purchase order number.

**A Cooperative member's obligation to Vendor is payable only and solely from funds available for the purpose of the purchase. Lack of funds will render a Cooperative member's Purchase Order and/or Member Construction Contract null and void to the extent funds are not available and any delivered but unpaid product will be returned to Vendor. Neither the Cooperative nor TASB is liable or responsible for any payment owed Vendor by a Cooperative member under the Contract.**

## 7. Product Inspection, Testing, and Defective Items

Products supplied under the Contract must be delivered in the best possible condition, be covered by the product warranties provided by Vendor and/or the product manufacturer to other customers, and are subject to inspection, testing, and approval by the Cooperative or a Cooperative member. Tests may be performed on samples taken from any regular shipment of the product. In the event a tested product fails to meet or exceed all requirements of the item specifications, these Terms and Conditions, and/or any Member Construction Contract, Vendor must pay the cost of the samples and/or the testing. Upon receipt of notification from the Cooperative or Cooperative member, Vendor must replace and, for tangible goods, pick up the defective product within five business days or on the next service date, whichever is sooner, without charge for the replacement or delivery. Additionally, the Cooperative or member may dispose of defective products that are not picked up and replaced by Vendor, without cost. Products damaged in shipment are considered defective for purposes of the foregoing. Latent defects discovered after delivery and acceptance of any products may result in revocation of the acceptance of such products. The Cooperative or Cooperative member must have access to Vendor's place of business during normal business hours for the purpose of inspecting any awarded product.

## 8. Product Updates and Substitutions *[Intentionally omitted.]*

## 9. Product and Service Guarantees and Warranties

Vendor shall extend such warranties on Awarded Items, including the installation thereof if such installation is provided by Vendor, as are normally provided to other customers of Vendor. All services shall be performed in a good and workmanlike manner consistent with industry standards. Unless a deviation is submitted by the Vendor with its proposal and accepted by the Cooperative pursuant to section B.4 (Deviations from Item Specifications or General



Terms and Conditions) or unless a different warranty is required by a Cooperative member Purchase Order, Member Construction Contract, or ancillary agreement, a minimum of a 90-day product or service guaranty or the manufacturer's standard commercial warranty, whichever is greater, will apply to all awarded products and services. At a minimum, all product warranties must provide for replacement of defective merchandise, parts, and labor, and include pick-up of the defective merchandise from the location specified by the Cooperative member and delivery of the replacement(s) to the same location. In addition, such warranty shall include curing any defects in connection with any Vendor installation of the product at no additional cost to the member. The warranty period is effective from the date the Cooperative member accepts the product or the date the service is completed and accepted by the Cooperative member. No waiver of implied warranties shall be effective unless explicitly approved by a Cooperative member in writing in accordance with section D.2 (Applicable Terms and Conditions; Ancillary Agreements). Vendor shall respond to any reasonable requests for information from the Cooperative, the Cooperative Administrator, or a Cooperative member pertaining to concerns regarding public health or safety in relation to Awarded Items and provide such documentation as may be reasonably requested. In the event of any product recalls affecting Awarded Items, Vendor shall notify the Cooperative Administrator and any Cooperative members who made purchases from Vendor for such recalled products in writing as soon as practicable of the recall and proposed action. At a minimum and without waiving any other requirements under the Contract, law, or Cooperative member Purchase Order, Member Construction Contract, or ancillary agreement, Vendor shall be required to take all action required by law or greater remedy as may be offered by Vendor to other customers with respect to recalled products, including but not limited to, prompt replacement and/or refunds.

#### **10. Multiple Distribution Centers, Single Point of Contact**

The Cooperative and Cooperative members will have **one Vendor contact person** for overall contract management relative to the Contract, even if Vendor uses multiple distribution centers, and the Cooperative and its members will not be required to deal with multiple Vendor contacts for overall contract management.

#### **11. BuyBoard Vendor Information and Reporting of Cooperative Member Purchases**

##### **(a) BuyBoard Website and Vendor Information**

The awarded Contract will be posted on the BuyBoard website as an online marketplace. By submitting a Proposal, Vendor consents to the posting of all Proposal and product information provided by Vendor including, but not limited to, Vendor's Proposal, contact information, and product pricing on the BuyBoard website for Cooperative members. Vendor further authorizes the Cooperative, the Cooperative Administrator, and any third-party contractor providing services for the BuyBoard website to receive and relay such information to Cooperative members electronically, including via electronic punch out from the BuyBoard website.

Posting of Vendor information on the BuyBoard website or other relay of Vendor information by the Cooperative to Cooperative members shall be for the convenience of Cooperative members and Vendors only and shall not be deemed a contractual obligation or duty on the part of the Cooperative. Whether and when to post information to the BuyBoard website shall be in the sole discretion of the Cooperative.

**Neither the Cooperative nor the Cooperative Administrator shall be liable to any party for information provided by Vendor or for any errors in Vendor information posted to the BuyBoard website or relayed to Cooperative members.** Vendor shall be fully responsible and liable to the Cooperative, the Cooperative Administrator, and Cooperative members for all information provided by Vendor related to the Proposal Invitation, Contract and/or for posting on the BuyBoard website. Vendor shall not upload, enter, or submit any information that may infringe the intellectual property rights of any third party or that contains software viruses or any other code, files, or programs that may damage or disrupt any software, hardware, or equipment. To the extent Vendor discovers any error in information on the BuyBoard website, Vendor shall promptly advise the Cooperative Administrator in writing at [contractadmin@buyboard.com](mailto:contractadmin@buyboard.com). Vendor shall also confirm the accuracy of all product and pricing information in Purchase Orders and Member Construction Contracts prior to acceptance and promptly notify the Cooperative member and Cooperative of any potential errors.



In using the BuyBoard Website, Vendor agrees to comply with BuyBoard Terms and Conditions of Use and BuyBoard Privacy Policy ("BuyBoard Website Terms") which are available on the website and may be updated from time to time. The BuyBoard Website Terms supplement the Contract. In the event of any conflict between the Contract and the BuyBoard Website Terms, the Contract shall prevail.

**(b) Purchase Order Reporting**

A Cooperative member may make purchases from Vendor under the Contract by issuing a Purchase Order to procure Awarded Items. **All Purchase Orders generated by or under the Contract must be processed through the BuyBoard. Except as expressly authorized in writing by the Cooperative Administrator, Vendor is not authorized to process a Purchase Order received directly from a Cooperative member that has not been processed through the BuyBoard or provided to the Cooperative.** To the extent Vendor receives a Purchase Order directly from a Cooperative member that Vendor has reason to believe has not been received by the Cooperative or processed through the BuyBoard, Vendor shall promptly provide a copy of the Purchase Order to the Cooperative Administrator.

A Vendor may request authorization to self-report Cooperative member purchases by completing the Vendor Request to Self-Report BuyBoard Purchases form included in the Proposal Invitation or such other form as may be required by the Cooperative Administrator. Any request must be submitted in writing and is subject to written approval by the Cooperative Administrator. To the extent that a Vendor is authorized in writing by the Cooperative Administrator to self-report Cooperative member purchases under the Contract, Vendor shall be required to comply with all additional terms and conditions imposed by the Cooperative as part of such authorization.

The Cooperative may, from time to time, in its reasonable discretion, provide instructions and modify the procedures for reporting Purchase Orders under the Contract by providing Vendor at least 30 days advance written notice. Vendor acknowledges and agrees that notice provided via electronic mail to the Purchase Order contact designated by Vendor in Vendor's Proposal, or subsequently updated in writing, shall satisfy this requirement. Continued acceptance of Purchase Orders and/or any Contract renewal by Vendor shall constitute acceptance of any modified Purchase Order procedures.

**The intent of the Cooperative member to purchase through the Cooperative Contract is paramount. The method or timing of reporting a Purchase Order to the Cooperative shall not alter the nature of the transaction as a BuyBoard purchase or relieve Vendor of the obligation to pay the service fee on such purchase.** Vendor must maintain the computer and telephone hardware necessary to provide for the electronic receipt of Purchase Orders and pay such costs and fees as may be imposed by a supplier or service provider for the software, equipment and service required to use the BuyBoard.

**(c) Vendor Invoices**

To further document and report Cooperative member purchases under the Contract, Vendor shall provide the Cooperative with copies of Vendor Invoices for all Cooperative member purchases under the Contract. Vendor shall submit copies or reports of Vendor Invoices to [info@buyboard.com](mailto:info@buyboard.com) promptly upon generation of the invoice. Vendor shall ensure that the Contract number and member Purchase Order number is included with the Vendor Invoice.

In lieu of providing copies of individual Vendor Invoices, Vendor may provide monthly reports of Vendor Invoices to [info@buyboard.com](mailto:info@buyboard.com) no later than the 10<sup>th</sup> day of the month. The monthly Vendor Invoice reports shall include a list of all invoices billed by Vendor during the preceding month to Cooperative members for purchases under the Contract. Monthly Vendor Invoice reports shall include any and all information reasonably required by and be in such format as may be reasonably required by the Cooperative Administrator. At a minimum, Vendor Invoice reports shall include the Cooperative member name, Purchase Order number, general description of the purchase including Contract number and Contract category under which the purchase was made, and invoice amount. Vendor agrees to cooperate with the Cooperative to promptly provide such reasonable information and documentation as the Cooperative Administrator may require regarding Purchase Orders received by Vendor and Vendor Invoices issued by Vendor under the Contract.



## 12. Service Fee

Vendor must pay the Cooperative the service fee specified in this Proposal Invitation and, unless this Proposal Invitation provides otherwise, the service fee is included in the Awarded Pricing. Except as otherwise provided in this section E.12, Vendor must remit the service fee to the Cooperative in Austin, Texas, within 30 days of the date of each service fee invoice.

Service fees shall be deemed incurred on the date of Vendor's receipt of payment for products or services by the Cooperative member. To the extent that a Vendor disputes any service fee listed in a service fee invoice, including but not limited to assertions that the purchase on which the fee is based has yet to be delivered or paid (e.g. special orders), was canceled by the Cooperative member, or is a duplicate purchase order, the Vendor must notify the Cooperative of the dispute in writing **no later than the 90<sup>th</sup> day after the original invoice date** ("Dispute Period") by returning a copy of the invoice or statement of outstanding balances to the Cooperative Administrator with each disputed item marked and the basis for dispute provided. To the extent that the disputed service fees have been paid by Vendor, any request for a refund must be provided to the Cooperative Administrator in writing, with supporting documentation, no later than the last day of the Dispute Period. Vendor agrees to cooperate, and require any billing agent to cooperate, with the Cooperative Administrator in attempting to reconcile and resolve disputed fees and shall provide such reasonable information and documentation as the Cooperative Administrator may require to review the disputed fees to the satisfaction of the Cooperative Administrator's staff. Any service fees for which the Cooperative Administrator has not received a notice of dispute or request for refund within the Dispute Period as set forth herein shall be deemed conclusively due and owing and no longer subject to dispute or claim for refund.

Unpaid service fees will be subject to collection in accordance with the Cooperative's Board policy on vendor invoicing and collections, which is available from the Cooperative Administrator on request.

A Vendor may designate a billing agent to receive Cooperative service fee invoices on Vendor's behalf. Such designation must be made in writing by an authorized representative of Vendor and properly submitted to the Cooperative Administrator in such form as the Cooperative Administrator may reasonably require. However, in so doing, Vendor acknowledges and agrees that such designation shall be for Vendor's convenience only and Vendor shall remain responsible for all obligations under the Contract, including payment of service fees, and shall remain subject to all remedies for default in payment thereof.

Vendor agrees to provide the Cooperative with copies of all Purchase Orders generated by or under the Contract that are received directly from Cooperative members, Vendor Invoices, and/or such other documentation regarding those Purchase Orders as the Cooperative Administrator may require in its reasonable discretion. Additionally, the Cooperative has the right, upon reasonable written notice, to review Vendor's records pertaining to purchases under the Contract with Cooperative members to verify purchase history and the accuracy of service fees payable from Vendor.

## 13. Disclaimer of Warranty and Limitation of Liability

THE COOPERATIVE AND TASB (BOTH D/B/A BUYBOARD) DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO THE AVAILABILITY, ACCURACY, CONTENT OR ANY OTHER ASPECT OF ANY INFORMATION, PRODUCT, OR SERVICE FURNISHED UNDER THE CONTRACT AWARD, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITH RESPECT TO ANY AND ALL CAUSES OF ACTION ARISING UNDER OR RELATED TO THE CONTRACT, NEITHER THE COOPERATIVE NOR TASB, NOR THEIR RESPECTIVE OFFICERS, BOARD MEMBERS, EMPLOYEES OR AGENTS, IS LIABLE TO VENDOR UNDER ANY CIRCUMSTANCES FOR LOST REVENUE, DATA OR PROFITS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, EVEN IF THE COOPERATIVE AND/OR TASB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY PROVIDED BY LAW, IN NO EVENT WILL THE COOPERATIVE AND/OR TASB'S TOTAL JOINT LIABILITY TO VENDOR EXCEED THE AMOUNT OF THE SERVICE FEE PAID BY VENDOR DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.



**Neither the Cooperative nor TASB is in any way liable to Vendor for a Cooperative member's performance or nonperformance of the member's obligations under the Contract, Purchase Order, or Member Construction Contract.**

#### **14. Sales Tax**

Cooperative members are governmental entities which are generally exempt by law from the payment of state sales tax and federal excise tax. Vendor may request a Cooperative member to provide a tax exemption certificate, or the member may establish its tax-exempt status by including tax exemption information or tax exemption certificate with the Purchase Order as authorized under law. Vendor is responsible for collecting such taxes, if any, as may be due from a Cooperative member and remitting payment to the appropriate taxing authority.

#### **15. Use of BuyBoard Logo and Trade Name**

The BuyBoard trade name and logo are proprietary to TASB and have been specifically licensed by TASB to the Cooperative. Vendor may not use, display, or otherwise distribute the BuyBoard logo or trade name except in strict accordance with the Cooperative's written guidelines posted on the BuyBoard website.

#### **16. Indemnification**

Vendor agrees to defend, indemnify, and hold harmless the Cooperative, TASB, and Cooperative members, and their officers, board members, agents and employees, from and against all third-party claims, actions, suits, liability, liens, loss and damage of any character, type, or description, including without limitation all expenses of litigation, court costs and attorney's fees, arising out of or related to (a) injury or death to any person or damage to any property related to the acts of Vendor or its agents, subcontractors, or employees in the execution of or performance under the Contract, a Purchase Order, or a member Construction Contract, as applicable; and (b) Vendor's negligence, misconduct, breach of contract or other failure to comply with its obligations in the execution or performance under the Contract, Purchase Order, or Member Construction Contract, as applicable.

#### **17. Intellectual Property Infringement by Vendor**

Without limiting the scope of section E.16 (Indemnification) of these Terms and Condition, if any claim is asserted, or action or proceeding brought against the Cooperative, the Cooperative Administrator, or a Cooperative member that alleges that either (1) all or any part of the products or services supplied by Vendor, in the form supplied or modified by Vendor, or its subcontractors pursuant to Vendor's sole directions, or (2) any information provided by Vendor or its designated dealers or agents to a Cooperative member, the Cooperative, or the Cooperative Administrator (including, but not limited to, information submitted by Vendor to the Cooperative or Cooperative Administrator for the BuyBoard website), infringes or misappropriates any United States intellectual property, intangible asset, or other proprietary right, title or interest (including, without limitation, any copyright or patent or any trade secret right, title, or interest), or violates any other contract, license, grant, or other proprietary right of any third party, the Cooperative, Cooperative Administrator, or Cooperative member upon its awareness, shall give Vendor prompt written notice thereof. Vendor shall defend, and hold the Cooperative, the Cooperative Administrator, and the Cooperative member harmless against any such claim or action and shall indemnify the Cooperative, the Cooperative Administrator, and Cooperative member against any liability, damages and costs resulting from such claim. In addition, if, in any such suit arising from such claim, the continued use of the product for the purpose intended is enjoined by any court of competent jurisdiction, unless otherwise agreed in writing by the Cooperative member, Vendor shall, at its expense and option, either (a) procure for the Cooperative member the right to continue using the product; (b) modify the product so that it becomes non-infringing; (c) replace the product or portions thereof so that it becomes non-infringing; or (d) allow the Cooperative member to return the product or cancel the service and refund the purchase price (less reasonable depreciation for use, if applicable.)

#### **18. Remedies for Default and Termination of Contract**

##### **(a) Default and Termination of Cooperative Contract**

Except as otherwise provided for in these Terms and Conditions, either party (Cooperative or Vendor) may terminate the Contract in whole or in part in the event of the other party's substantial failure to fulfill its



obligations under the Contract through no fault of the terminating party; provided, however, that the defaulting party is given at least 10 business days prior written notice of the default and intent to terminate (delivered by certified mail, return receipt requested, or other method that similarly documents receipt), and, to the extent the default is capable of being cured, a 10 business day opportunity to remedy the default to the satisfaction of the terminating party (or, in the event of default based on Vendor's failure to timely remit the service fee due the Cooperative, such longer cure period as may be established by Cooperative policy.)

At the Cooperative's option and in addition to any other remedies it may have available, the Cooperative may terminate the Contract if Vendor fails to adhere to or violates any of the provisions of these Terms and Conditions, including the certifications. Without limiting the scope of the foregoing, one or more of the following constitute grounds for termination:

- 1) Materially misleading or false statement(s) in Vendor's Proposal;
- 2) Delivery of product or services that fail to meet the item specifications;
- 3) Delivery of product or services that are defective or substandard or fail to pass product inspection;
- 4) Failure to meet required delivery schedules;
- 5) Failure to timely supply Awarded Items at the Awarded Pricing;
- 6) Failure to timely remit any service fee due the Cooperative under the Contract or any other BuyBoard contract with Vendor, its parent company, or affiliates;
- 7) Failure to provide, within a reasonable time and where required by the Contract, information reasonably requested by the Cooperative or Cooperative Administrator including, but not limited to, information requested under sections E.11 (BuyBoard Vendor Information and Reporting of Cooperative Member Purchases) or E.12 (Service Fees) of these Terms and Conditions;
- 8) Processing a Purchase Order received directly from a Cooperative member, without prior written approval from the Cooperative Administrator;
- 9) Providing architectural or engineering services under the Contract that must be procured pursuant to the Professional Services Procurement Act (Chapter 2254 of the Texas Government Code);
- 10) Selling non-awarded products or services under the Contract or any other BuyBoard contract;
- 11) Vendor refusal, inability, or loss of ability to offer or provide Awarded Items to Cooperative members in awarded regions or states unless caused by a Force Majeure event pursuant and subject to section E.19 (Force Majeure); or
- 12) Failing to provide a Cooperative member with a copy of the BuyBoard Procurement and Construction-Related Goods and Services Advisory for Texas Members before executing a Member Construction with the member or accepting the Cooperative member's Purchase Order for construction-related goods or services, whichever comes first.

Notwithstanding any other provision of this section E.18, in the event of Vendor's default under or breach of any provision in the Contract, the Cooperative reserves the right to enforce the performance of the Contract in any manner prescribed by law or deemed to be in the best interest of the Cooperative or necessary or appropriate to protect or provide best value to Cooperative members. Without limiting the scope of the foregoing, the Cooperative, acting by or through the Cooperative Administrator, may temporarily inactivate (suspend) Vendor from the BuyBoard website and as a BuyBoard vendor, or require removal of an Awarded Item with or without prior notice to Vendor, if the Cooperative or Cooperative Administrator reasonably determines that that there has been a breach under the Contract or any other BuyBoard contract with Vendor, including but not limited to nonpayment of service fees, or that there is a potential policy, public health, or safety issue to warrant such action. The temporary inactivation may remain in effect pending further action or termination of the Contract by the Cooperative. Vendor remains liable for all obligations and responsibilities incurred prior to and during any temporary inactivation and prior to termination, as applicable.

In the event the Cooperative terminates the Contract, in whole or in part, the Cooperative reserves the right to award the terminated Contract, or any portion thereof, to the next Proposer the Cooperative determines to provide best value to Cooperative members. Additionally, the Cooperative may sue for breach of contract and specific



performance and, in addition to contract damages, recover attorneys' fees and costs. Vendor shall be liable for any and all damages permitted by law, and any deviation submitted by Vendor in its Proposal seeking to limit Vendor's liability to the Cooperative shall be deemed rejected.

The Cooperative will not be liable to Vendor for any damages (including, but not limited to, loss of profits or loss of business, or any special, consequential, exemplary, or incidental damages) resulting from termination based on Vendor's default or breach of contract.

If any delay or failure of performance is caused by a Force Majeure event as described in section E.19 (Force Majeure) of these Terms and Conditions, the Cooperative may, in its sole discretion, terminate the Contract in whole or part, provided such termination complies with the procedures set out above. Any Contract termination resulting from any cause other than a Force Majeure event will be deemed a valid reason for the Cooperative not considering any future proposals from the defaulting Vendor.

In the event a Vendor's Contract is terminated under this section E.18, Vendor shall remain responsible for payment of all service fees to the Cooperative for Awarded Items sold under the Contract to Cooperative members prior to such termination.

**(b) Default and Termination of Cooperative Member Purchase**

A Cooperative member has no authority to terminate the Contract at the Cooperative level for default. A Cooperative member may terminate a Purchase Order or Member Construction Contract or refuse to accept delivery (1) as provided for in these Terms and Conditions, Cooperative member Purchase Order, Member Construction Contract, or ancillary agreement, or (2) for Vendor's material breach of a term or condition included in the Contract, a Cooperative member Purchase Order, Member Construction Contract, or ancillary agreement. Additionally, to the extent permitted by law, Cooperative members may sue for breach of contract and specific performance and, in addition to contract damages, recover attorneys' fees and costs. Nothing herein shall limit the remedies available to a Cooperative member under applicable law.

A Cooperative member will not be liable to Vendor for any damages (including, but not limited to, loss of profits or loss of business, or any special, consequential, exemplary, or incidental damages) resulting from termination based on Vendor's default or breach of contract.

**19. Force Majeure**

The term Force Majeure includes, but is not limited to, governmental restraints or decrees, provided they affect all companies in Vendor's industry equally and are not actions taken solely against Vendor; acts of God (except natural phenomena, such as rain, wind, or flood, which are normally expected in the locale in which performance is to take place); work stoppages due to labor disputes or strikes; fires; explosions; epidemics or pandemics; riots; war; rebellion; or sabotage. The Cooperative, Cooperative members, and Vendor are required to use due caution and preventive measures to protect against the effects of Force Majeure, and the burden of proving that Force Majeure has occurred rests on the party seeking relief under this section E.19. The claiming party must promptly notify the other party in writing, citing the details of the Force Majeure event, use due diligence to overcome obstacles to performance created by the Force Majeure event, and resume performance immediately after the obstacles have been removed, provided the Contract has not been terminated in the interim.

Delay or failure of performance of the Contract, a Purchase Order, or Member Construction Contract caused solely by a Force Majeure event will be excused for the period of delay caused solely by the Force Majeure event, provided the party claiming the event promptly notifies the other party in writing. Neither party shall have any claim for damages against the other resulting from delays caused solely by Force Majeure. The Cooperative will not be responsible for any cost incurred by Vendor because of a Force Majeure event. A Cooperative member will not be responsible for any cost incurred by Vendor because of the Force Majeure event unless an authorized representative of the Cooperative member has requested, in writing, that Vendor incur such cost in connection with any delay or work stoppage caused by the Force Majeure event.





Notwithstanding any other provision of this section E.19, in the event Vendor's performance of its obligations under the Contract is delayed or stopped by a Force Majeure event, the Cooperative may, at its sole option, terminate the Contract in accordance with section E.18 (Remedies for Default and Termination of Contract) of these Terms and Conditions. This section E.19 does not limit or otherwise modify any of the Cooperative's rights as provided elsewhere in the Contract.

## **F. Miscellaneous**

### **1. Assignment**

Vendor may not sell, assign, transfer, convey or subcontract any responsibility or obligation created by the Contract in regard to the Cooperative without the Cooperative's prior written consent. A Vendor wishing to assign, transfer, or convey all or any portion of an awarded Contract shall submit a written request to the Cooperative, preferably at least 60 days before the projected effective date of the assignment and promptly provide such information as the Cooperative may require to process and consider the request.

Approval or denial of an assignment request shall be within the sole discretion of the Cooperative, and a vendor not awarded a Contract through the Proposal Invitation process has no right or vested interest to assignment of an awarded Contract. In determining whether to consent, the Cooperative may consider any relevant factors, including whether the party to which the sale, assignment, transfer, conveyance or subcontract is proposed is bound to and will honor all obligations and responsibilities imposed on Vendor under the Contract, including Awarded Pricing, and the best interest of and value to Cooperative members. Vendor's attempted sale, assignment, transfer, conveyance or subcontracting of any part of the Contract except in compliance with this section F.1 is void and ineffective.

### **2. Notices**

Unless otherwise provided for in this Proposal Invitation, any written notice or other communication required by the Contract or by law will be conclusively deemed to have been given and received on the third business day after such written notice has been deposited in the U. S. Mail, properly addressed, and with sufficient postage affixed thereto, provided that actual notice may also be given via electronic mail or in any other manner used in commerce.

If the conclusion of any time period provided for in these Terms and Conditions falls on a weekend or a federal holiday, the conclusion of such time period shall be deemed to be extended until the next business day. Otherwise, references to time periods measured by days shall mean calendar days unless business days are specifically designated.

### **3. Equal Employment Opportunity (EEO) Disclosures**

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the state in which Vendor's primary place of business is located. In accordance with such laws, regulations and executive orders, Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status, disability or genetic information, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies.

### **4. Applicable Law, Venue and Dispute Resolution**

The Contract is governed by and will be construed according to the laws of the State of Texas, including the Uniform Commercial Code (UCC) as adopted in the State of Texas as effective and in force on the date of the Contract. Venue for any litigation concerning the Cooperative or TASB lies in Austin, Travis County, Texas, and venue for any litigation between a Cooperative member and Vendor arising under the Contract lies in the home county of the member. The parties have the mutual affirmative duty to attempt to resolve any disputes that arise under the Contract in good faith at the least possible expense prior to the initiation of any type of judicial or administrative proceeding.



#### **5. Waiver**

No claim or right arising out of a breach of the Contract can be discharged in whole or part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. A party's failure to require strict performance of any provision of the Contract does not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision.

#### **6. Interpretation – Parol Evidence**

This writing is intended by the parties as a final expression of their agreement and a complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties and no usage of the trade is relevant to supplement or explain any terms used in the Contract. Acceptance or acquiescence in a course of performance rendered under the Contract is not relevant to and does not determine the meaning of the Contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection.

#### **7. Right to Assurance**

Whenever the Cooperative in good faith has reason to question Vendor's intent to perform, the Cooperative may demand that Vendor give written assurance of its intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the Cooperative may treat the failure as an anticipatory repudiation of the Contract.

#### **8. Non-Appropriations Clause**

Texas law prohibits the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. A Cooperative member that is a governmental entity (a) reserves the right to rescind a multi-year purchase order or other agreement to purchase products or services under the Contract at the end of the member's fiscal year if it is determined that funding is not available to extend the agreement; and (b) will use its best efforts to attempt to obtain and appropriate funds for payment.

#### **9. Invalid Term or Condition**

If any term or condition of the Contract is held invalid or unenforceable, the remainder of the Contract will not be affected and will be valid and enforceable.

#### **10. Remedies Cumulative**

The remedies available to the Cooperative, a Cooperative member, or Vendor under this Contract are in addition to any other remedies that may be available under law or in equity.

#### **11. Signatures**

Except as otherwise specifically required in these Terms and Conditions, all notices, requests, amendments and other written documentation required or authorized under the Contract may be provided electronically or as an imaged document, and an electronic or facsimile signature shall be deemed an original.

#### **12. Right of Setoff**

Any indebtedness or obligation owed by Vendor or Vendor's affiliates to the Cooperative may be appropriated and applied by the Cooperative at any time, and from time to time, on any indebtedness or other obligation owed by the Cooperative to Vendor or Vendor's affiliates, whether such indebtedness or other obligations are now existing or hereafter arise, and whether under the Contract or otherwise. It is further understood and agreed that this right of setoff is in addition to, and not in lieu of, any other right, remedy or recourse which is available to the Cooperative either at law or equity, and that failure to exercise such right of setoff in any instance shall not constitute a waiver of such right.



## APPENDIX

### **ADDITIONAL TERMS AND CONDITIONS FOR BUYBOARD SELF-REPORTING**

The following additional terms and conditions shall apply to any approved Vendor Request to Self-Report BuyBoard Purchases:

1. **BuyBoard Contracts Subject to Self-Reporting.** Authorization to self-report shall apply only to a Contract awarded under this Proposal Invitation. To the extent Vendor is awarded on another BuyBoard contract or contracts, separate authorization to self-report for such other contract(s) is required.
2. **Monthly Vendor Reports.** Vendor shall submit reports of Cooperative member purchases monthly to the Cooperative Administrator ("Monthly Vendor Reports"). All Monthly Vendor Reports shall be provided to BuyBoard at [contractadmin@buyboard.com](mailto:contractadmin@buyboard.com) no later than the 10<sup>th</sup> day of the month. The Monthly Vendor Reports shall include a list of all purchase orders completed and invoiced by Vendor during the preceding month for BuyBoard members. Monthly Vendor Reports shall include any and all information reasonably required by, and in such format as may be reasonably required by, the BuyBoard Administrator from time to time. At a minimum, Monthly Vendor Reports shall include:
  - i. BuyBoard member name;
  - ii. Purchase Order amount;
  - iii. Purchase Order number;
  - iv. Date Purchase Order submitted to vendor;
  - v. Date purchase executed / completed / delivered;
  - vi. List of any Purchase Orders on prior Monthly Vendor Report(s) subsequently canceled;
  - vii. General description of purchase, including Vendor's awarded BuyBoard contract number and category or categories under which the purchase was made; and
  - viii. Final purchase amount total (as invoiced to BuyBoard member);
  - ix. Invoice Date.
3. **Reconciling Self-Reported Information and Discrepancies.** BuyBoard may, in its sole discretion, periodically send information to Cooperative members listing all purchases self-reported by Vendor for the Cooperative member and/or request reports from Cooperative members containing purchase order data. If discrepancies are noted or reported by the Cooperative member as a result of such report or otherwise, Vendor agrees to promptly respond and cooperate with the Cooperative and/or Cooperative members to reconcile and correct any discrepancies. Vendor further agrees to promptly respond to requests and comply with any reasonable request for information and documentation by the Cooperative or a Cooperative member to assist in such reconciliation.
4. **Vendor Accounts.** Recognizing that Cooperative members seeking best value may wish to compare pricing from multiple cooperatives when considering individual purchases, the Cooperative expects Vendor to honor any request by a Cooperative member to make a purchase through the Contract and expects that Vendor will not seek to limit or inhibit a Cooperative member from making individual purchases through the purchasing cooperative of its choice, regardless of the Cooperative member establishing an account with Vendor designating BuyBoard as its cooperative.



5. **Vendor Obligation Comply with BuyBoard Contract.** Nothing in an authorization to self-report shall be deemed to waive any of Vendor's obligations under the General Terms and Conditions of the Contract, including but not limited to Vendor's obligations to honor Cooperative member Purchase Orders and pay all service fees on such Purchase Orders. Nothing shall require Cooperative members to utilize Vendor's self-reporting option to make purchases under the Contract. Vendor shall process all Purchase Orders, including any Purchase Orders received directly through the BuyBoard.
6. **Amendment.** These Additional Terms and Conditions for BuyBoard Self-Reporting are subject to amendment by the Cooperative at any time in its sole discretion. BuyBoard shall provide written notice to Vendor of any amendment, and the amendment shall be effective thirty (30) days after the date of the written notice.
7. **Termination of Self-Report Authorization.** The Cooperative may terminate any authorization for Vendor to self-report at any time for any reason, in its sole discretion. Notice of termination, including the effective date of the termination, shall be provided to Vendor in writing. If Vendor at any time wishes to cease self-reporting BuyBoard member purchases, including after receipt of amended self-reporting terms or conditions as provided herein, Vendor shall provide the Cooperative with at least thirty (30) days prior written notice of its request to revoke, listing the effective date of such revocation in the notice. Any termination or revocation of an authorization to self-report shall pertain to Vendor self-reporting only and shall not affect an awarded Vendor's underlying BuyBoard contract.
8. **BuyBoard Contract Terms and Conditions.** Self-reporting is subject to the General Terms and Conditions of the Contract. Unless otherwise indicated, all capitalized terms used herein shall have the same meaning as set forth in the General Terms and Conditions of the Contract.
9. **Assignment.** An authorization to self-report is specific to Vendor and not subject to assignment. In the event a Vendor's awarded Contract is subsequently assigned to another vendor where permitted by the Contract, the Contract assignee must submit its own Vendor Request to Self-Report BuyBoard Purchases and receive approval of such request by the BuyBoard Administrator.