



12007 Research Boulevard • Austin, Texas 78759-2439 • PH: 800-695-2919 • FAX: 800-211-5454 • [buyboard.com](http://buyboard.com)

## **NOTICE OF PROPOSAL INVITATION**

The Local Government Purchasing Cooperative (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, assisted in the formation of the Cooperative, and TASB along with 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 all endorse the Cooperative.

The Cooperative's contracts for commodities and services will be available to the members of TASB, TML, and TAC, and other local governmental entities that are members of the Cooperative eligible to purchase through a government purchasing cooperative or interlocal contract. TASB, the Cooperative's administrator, provides the electronic commerce technology to the Cooperative to enable members' purchasing to be accomplished electronically.

**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 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: Director of Cooperative Procurement  
12007 Research Blvd.  
Austin, TX 78759  
Phone: 512-467-0222  
Fax: 800-211-5454  
E-Mail: [bids@buyboard.com](mailto:bids@buyboard.com)

Sealed proposals are being solicited for the products, supplies, services and/or equipment as set forth in this Proposal Invitation and are solicited 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 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 as further explained in the Proposal Invitation.

Completed sealed proposals for **Proposal No. 635-21 for Cured in Place Pipe (CIPP) for Pipeline Rehabilitation** **must be received on or before 4:00 PM September 17, 2020**, 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.**



## PROPOSAL INVITATION NO. 635-21

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## INSTRUCTIONS TO PROPOSERS

### Electronic Proposal Submission

The Cooperative is now accepting electronic proposal submission and is requesting that Vendors submit proposals electronically via 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.

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

- In order to submit proposals electronically, you must have a working registered vendor username and password to login. If you do not have a registered vendor user name 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 its 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.***
- **PROPOSAL SPECIFICATIONS:** – Select the "Line Items" tab to locate the Proposal Specifications.
  - Input all required proposal pricing information (discount (%) off catalog/pricelist, line item pricing, hourly labor rates, and/or other related pricing information as specified).
  - 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.**
  - Vendors proposing various manufacturer product lines per line item on the Proposal Specification Form must submit the information as follows or proposal may not be considered:
    - i. Manufacturers shall be listed in alphabetical order
    - ii. Vendor's must list one specific percentage discount for each manufacturer listed. Use the "Add Alternates" option as needed to add additional manufacturers.



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- **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) and electronic catalogs/pricelists. **Electronic Catalogs/Pricelists must be submitted with the Proposal in the format required by these Proposal Instructions or it will not be considered.**
- **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, rather than utilizing electronic submission, 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 **at least five (5) business days prior to the Proposal submission deadline.**
- 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 and Electronic Catalogs/Pricelists must be submitted with the Proposal in the format required by these Proposal Instructions or it will not be considered.**
  - **Vendors proposing various manufacturer product lines per line item on the Proposal Specification Form must submit the information as follows or the Proposal may not be considered:**
    - a. **Manufacturers shall be listed in alphabetical order**
    - b. **Vendor's must list one specific percentage discount for each manufacturer listed. Use the "Add Alternates" option as needed to add additional manufacturers.**
- The 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 submission deadline:

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 its 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 its administrator shall be responsible for proposals delivered in a corrupt or unreadable electronic format.

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



**REQUIREMENTS FOR VENDOR CATALOGS/PRICELISTS**

Electronic catalogs/pricelists must be submitted in the required format with the Proposal (whether submitted electronically through the designated website or in hard copy format via mail or hand delivery) or the Proposal will not be considered. The following is required of all Vendor catalog(s)/pricelist(s) submitted to the Cooperative:

Vendors are required to submit catalog(s)/pricelist(s) in **searchable PDF electronic format ONLY**. No other format will be accepted. Further, no paper catalogs or manufacturer/vendor websites will be accepted.

**Below is a sample chart**, with examples of data for each field, showing the data fields that Vendors **MUST** include in each submitted pricelist/catalog:

BuyBoard Specification Item No. Category	Part/Item Number	Item Description	List Price
1	1234	Desk	\$50.00
2	1235	Chair	\$20.00

The catalogs/pricelists must include all listed data fields (BuyBoard specification category, part/item number, item description, and list price) or the Proposal will not be considered. Catalogs and pricelists should contain only items that relate to the items requested in the specifications. Vendors are discouraged from including irrelevant or non-responsive information with their Proposal. The Cooperative reserves the right to deem a Proposal non-responsive if the Proposal, including catalogs or pricelists submitted with the Proposal, do not specifically relate to the intent of the Proposal Invitation or contain what the Cooperative deems, in its sole discretion, excessive irrelevant or non-responsive information, including information which makes it burdensome or impractical for the Cooperative to identify responsive products and pricing.

**INSTRUCTIONS FOR VENDORS PROPOSING MULTIPLE MANUFACTURER PRODUCT LINES:**

As set forth above, Vendors proposing various manufacturer product lines per line item must submit the information as follows *or Vendor’s proposal may not be considered*:

- Manufacturers shall be listed in alphabetical order
- Vendor’s must list one specific percentage discount for each Manufacturer listed

**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. 635-21 – Cured in Place Pipe (CIPP) for Pipeline Rehabilitation

*\*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 Invitation Forms
4. Proposal Specifications
5. General Terms and Conditions

### PROPOSAL SUBMISSION INSTRUCTIONS

Proposal responses (including completed and signed Proposal Invitation forms, completed Proposal specifications, and pricelists/catalogs) 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 for the purchase of various types of Cured in Place Pipe (CIPP) for Pipeline Rehabilitation products and services that may be purchased by Cooperative members. Because individual members require different equipment, supplies, and/or services this Proposal Invitation is a request for a discount off of catalog or price list for supplies, materials and equipment, as well as not-to-exceed hourly labor rate and coefficient factors to be applied to unit price books for installation and repair service. Purchases can be made by a Cooperative member at any time during the contract term.

### TERM OF CONTRACT

The term of this contract will be from March 1, 2021 through February 28, 2022, with two (2) possible one (1) year renewals.

An awarded Vendor has no right to or vested interest in contract renewal. The Cooperative will evaluate the contract award prior to the expiration of the then-current term on the basis of factors that may include the annual amount of business, performance and continued provision of best value to Cooperative members.

**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. A renewal must be mutually agreed upon by both parties.

### VALUE OF CONTRACT

**The estimated value of this contract is \$45,699,508;** however, this estimate is based on prior contracts for similar types of products and services and should not be construed to be a guaranty of either minimum or maximum since usage is dependent upon Cooperative members' actual needs and available funding.

An awarded Vendor must supply products and services at or below the awarded pricing for the duration of the contract and honor all Purchase Orders prepared by each individual Cooperative member.



## **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. Vendor agrees to provide the Cooperative with copies of all Purchase Orders generated from Vendor's contract(s) that Vendor receives directly from Cooperative members, or such other documentation regarding those purchase orders as the Cooperative's administrator may require in its reasonable discretion. Vendor further agrees that the Cooperative shall have the right, upon reasonable written notice, to review its records pertaining to purchases under any awarded contract to verify purchase history and the accuracy of service fees payable by Vendor.

## **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.

## **ADDITIONAL INFORMATION**

An awarded Vendor must be approved by the manufacturer to sell, install, and service the brand of product and equipment submitted. Proposers responding to this Proposal Invitation should submit an approval letter from each manufacturer. Manufacturer authorization letters must include the regions of Texas and nationally in which product and equipment may be sold. Manufacturers responding directly to this proposal invitation, in lieu of an authorization letter, must submit a letter explaining that the company is the manufacturer of the products proposed.

## **HOURS OF WORK**

The Proposal Specifications require submission of pricing for both Standard Hours and Non-Standard Hours. Vendors are expected to pursue the contracted tasks during the hours of 7 a.m. to 5 p.m., Monday through Friday ("Standard Hours"). Hours other than Standard Hours shall be considered non-standard hours ("Non-Standard Hours").

Non-Standard Hour rates are permissible only where work during Non-Standard Hours is either specifically requested or approved in writing by the Cooperative member. If a Vendor elects to perform services during Non-Standard Hours, at its own option for Vendor's own convenience when neither requested nor required by the Cooperative member, Vendor must perform such work at Standard Hours rates and satisfy the following requirements:

- Vendor submits a request to the Cooperative member 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.

## **AWARD AND EVALUATION**

This contract will be awarded based on the evaluation and award criteria set out in Section C.2 of the General Terms and Conditions to provide best value to Cooperative members.

This Proposal Invitation requires Proposers to provide certain information that the Cooperative does not evaluate and is not included in the award criteria set out in Section C.2. The Cooperative requests the information, however, because it may be relevant to federal, state or local procurement law or other legal requirements that apply to various Cooperative



members. The information, which will be made available to Cooperative members with respect to awarded Vendors, includes the following:

- a) Proposer's status as a minority/woman-owned business enterprise, historically underutilized business, or service-disabled veteran;
- b) Whether Proposer or its ultimate parent or majority owner has its principal place of business in Texas or employs at least 500 persons in Texas; and
- c) Whether Proposer is a Texas resident or a non-resident business.

### **TYPE OF CONTRACT**

This is a "sealed proposal" based on discount off catalog or price list, and also contains a not-to-exceed rate for installation and repair services. As provided in the Proposal specifications, Vendors proposing to provide installation and repair services may propose a not-to-exceed hourly labor rate, a not-to exceed coefficient for unit price book, or both. 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.

Except as provided in section E.4 of the General Terms and Conditions or otherwise in this Proposal Invitation, Vendor shall hold its awarded pricing firm during the contract term. In the event of price decreases, such price decreases shall be allowed for all products. Catalogs/pricelists, where required by the Proposal specifications, must be submitted with the Proposal or your proposal will be deemed nonresponsive.

### **COMPLIANCE WITH APPLICABLE LAWS**

By signing this 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 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 regards to awarded products and/or services. Individual Cooperative members may in certain circumstances request background checks on an awarded Vendor's employees who will have direct contact with students, or for other reasons, and may require Vendor to pay the cost of obtaining criminal history information.

An awarded Vendor for root control services must be licensed in accordance with federal and state regulations for pesticide control services, USEPA Root Control Agent Registration, and Texas Root Control Product Registration. An awarded Vendor's applicators must be certified to provide these services. Material Safety Data Sheets (MSDS) for all chemicals and pesticides must be made available and provided to Cooperative members upon request. Proposers responding to this Proposal Invitation that propose to provide root control services should submit proof of license for Pest Control Services for each state the Vendor proposes to serve. **Specifically, Vendor's proposing to perform root control work must provide the following:**

- a. Texas (or other applicable state(s)) Pesticide Business License No(s).
- b. Federal Department of Transportation No.
- c. USEPA Root Control Agent Registration No.
- d. Texas (or other applicable state(s)) Root Control Product Registration No.
- e. Name of Pollution Liability Insurance Carrier
- f. List of Employees with Certificates of Completion in confined space entry training, per 29 CFR 1910.146, including certificate number and date of certification
- g. Proposer's Texas (or other applicable state(s)) Certified Pesticide Applicators (List 3 minimum)





## **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 signing and submitting the Construction Related Goods and Services Affirmation form in the Proposal Invitation 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.

## **DELIVERY RESPONSE**

Unless otherwise noted in the Proposal (as a deviation) or the Purchase Order, routine delivery response to a Cooperative member shall be within ten (10) business days after receipt of a Purchase Order, and delivery shall be made during the ordering Cooperative member's normal business hours. Any Cooperative member may request emergency delivery. Awarded Vendors shall use their best efforts to comply with rush or emergency requests. However, if the Vendor cannot fulfill the emergency delivery requirements, the Cooperative member may procure the products or services from alternative sources without penalty.

## **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 proposals must complete the EDGAR Vendor Certification Form contained in the Proposal Invitation 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.

## **TEXAS WATER DEVELOPMENT BOARD**

Section B.12(b) of the General Terms and Conditions (Certifications) requires a Proposer to comply with all federal, state and local (which include municipal codes) laws related to the products and services provided under and the Proposer's activities in connection with this contract. Without limiting the scope of the foregoing, Proposers are advised that many projects that may be performed under this contract are subject to Texas Water Development Board requirements, and awarded vendors must comply with all applicable instructions, supplementary conditions, and other TWDB requirements. Information regarding the TDWB requirements and forms may be found at [www.twdb.texas.gov/financial/instructions](http://www.twdb.texas.gov/financial/instructions).



## 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, and are an integral part of any contract which is awarded by the Cooperative under this Proposal Invitation and 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:

**"BuyBoard®"** means the internet-based electronic commerce technology provided by the Cooperative's administrator, the Texas Association of School Boards, Inc. (TASB), to enable Cooperative members to purchase awarded goods and services electronically.

**"BuyBoard Administrator"** means the Director of Cooperative Procurement identified in this Proposal Invitation (or his/her successor).

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

- a) This Proposal Invitation;
- b) Proposer's Proposal;
- c) Notice of Award issued to Proposer by the Cooperative;
- d) Member Purchase Order; and
- e) Member Construction Contract.

**"Cooperative"** means, collectively, The Local Government Purchasing Cooperative (which may also be referred to as "Texas Cooperative" herein) and its administrator, TASB, 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, addenda, and supplements and/or clarifications.

**“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 signed 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, including a record of an online order placed through a Vendor website or record of a purchasing card (P-card) purchase, which is used in making a purchase from Vendor under a BuyBoard contract.

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

This Proposal Invitation may include 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.1 (Notice of Award and Related Matters).



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 good or service 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. Catalog numbers, brand names, or manufacturer product or reference numbers used in the item specifications in this Proposal Invitation are intended to be descriptive, not restrictive. These references, as well as "approved brands and/or models" listed, are intended to identify and indicate the type of product being sought and establish the level of quality desired. If any conflict exists in the item specifications between the product descriptions and any brand names or model or reference numbers used, the product descriptions will override the brand names or model number references.

In some cases, however, the Cooperative may find it advantageous in order to provide best value to Cooperative members to standardize equipment and/or supplies by manufacturer in order to achieve efficiencies in procurement, repair, and operation, to match existing stock, or to satisfy other requirements. In these limited cases, preference will be given to the specific products identified as "approved brands and/or models," especially if all other evaluation factors are deemed to be equal. For this reason, where specific brands or models are identified, Proposer is encouraged to propose the exact item specified, in addition to an alternate brand or model with equal/equivalent functionality or features where appropriate or necessary.

In all cases, Proposals must identify the manufacturer, brand, model, etc., of the item being offered. For Proposals on "equal/equivalent" items other than the specified "approved brand and/or model," Proposer must supply a complete description and sufficient data for the Cooperative to properly analyze the product being proposed, including its functionality and features. In order to conduct such analysis, the Cooperative may request samples for items other than "approved brands and/or models." If the specification identifies a specific brand or model for any item and Proposer fails to identify the manufacturer, brand, model, etc., for that item, **the Cooperative will assume Proposer is proposing on the exact brand and model identified in the specification, and if awarded a contract, Vendor must furnish the exact brand name, model, etc., as specified. Substitutions will not be allowed after the contract is awarded,** except as provided for in section E.8 (Substitutions) of these Terms and Conditions.

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 BuyBoard Administrator of the error in writing immediately, but in no event later than the tenth (10<sup>th</sup>) business day before the Proposal Due Date.

### 2. Pricing

A "Line Item" Proposal must be for a specific price for the unit of measure specified for that item. Proposer is responsible for clearly noting any differences in proposed packaging and/or units of measure as a deviation in accordance with section B.4 (Deviations from Item Specifications or General Terms and Conditions) of these Terms and Conditions. If this Proposal Invitation requires "discount from catalog" pricing, Proposer must quote a single discount percentage to be applied to all items in Proposer's published catalog. Proposer must submit the catalog or published pricelist with the



Proposal in electronic format. Catalogs and pricelists should contain only items that relate to the items requested in the specifications. Vendors are discouraged from including irrelevant or non-responsive information with their Proposal. The Cooperative reserves the right to deem a Proposal non-responsive if the catalogs or pricelists submitted do not specifically relate to the intent of the Proposal Invitation or contain what the Cooperative deems, in its sole discretion, excessive irrelevant or non-responsive information, including information which makes it burdensome or impractical for the Cooperative to identify responsive products and pricing.

Proposer's pricing must be "equal to or better" than pricing Proposer offers other similar customers. 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.

### **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**

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

The Cooperative 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.

Other than any deviation submitted in writing with the Proposal and **accepted by the Cooperative**, the Cooperative will hold Proposer accountable to the Cooperative and Cooperative members to perform in strict accordance with these Terms and Conditions and the item specifications as written.



## 5. Addenda

Any interpretation, correction or change to this Proposal Invitation will be made by 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 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 Proposer's responsibility to monitor the BuyBoard vendor website for possible addenda and incorporate any posted addendum into the Proposal. Proposer must acknowledge each addendum in accordance with the instructions accompanying the addendum.

## 6. Samples

The Cooperative may request a product sample. Proposer must furnish the requested sample at no cost to the Cooperative, and, unless otherwise specified, the Cooperative must receive the sample within 72 hours of the request. The submitted sample must be labeled with the Proposal Invitation name and number, item number, product identification number, and Proposer's name. Proposer's failure to submit a sample when requested will result in the product in question not being considered for award to Proposer.

The Cooperative will retain samples for a sufficient length of time for proper evaluation. If not destroyed or consumed during examination or testing, the Cooperative will return samples to Proposer at Proposer's expense, provided that Proposer has included a written return request with the submitted samples. Notwithstanding the foregoing, the Cooperative may permanently retain samples submitted by awarded Proposers for the purpose of determining that the quality and workmanship of awarded products delivered to Cooperative members is comparable to the samples. The Cooperative is not liable for samples that are damaged, destroyed or consumed during examination or testing.

## 7. Proposal on All or Certain Items

Unless otherwise specified, Proposer may propose on any or all items. Proposer should answer all questions related to each item on which Proposer wishes to propose, and either leave the questions for other items unanswered (blank) or indicate "No Bid." 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 will be an event of default and grounds for termination of the Contract.**

## 8. "All or Nothing" Awards

Unless otherwise indicated in this Proposal Invitation, "all or nothing" Proposals are **not** acceptable and will be rejected. Proposer 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

**The requirements of Subchapter J, Chapter 552, Texas Government Code<sup>1</sup>, 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 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:

- (a) 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);
- (b) 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
- (c) on completion of the Contract (including any Purchase Order or Member Construction Contract thereunder), either:
  - (i) 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;
  - (ii) 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.

**Proposer must clearly identify information in the Proposal that Proposer considers proprietary or confidential by completing the Confidential/Proprietary Information form. 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 Proposer fails to properly identify the information, 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 Proposer's failure to clearly identify information Proposer considers confidential or proprietary. Proposer will be notified of any third party request for information that Proposer has identified in the Confidential/Proprietary Information form as proprietary or confidential.**

<sup>1</sup> Section 9, Senate Bill No. 943, 86<sup>th</sup> Tex. Leg. R.S., effective January 1, 2020.



#### **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**

Proposer 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 in the Proposal Invitation 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 Proposer'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 their 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 to withdraw the Proposal. The request to withdraw must be signed by an individual authorized to enter into contracts on Proposer's behalf and indicate the individual's title. If the BuyBoard Administrator has any question or doubt regarding Proposer's identity or the identity of its Proposal, withdrawal will not be allowed. If the Cooperative decides to allow the withdrawal, Proposer's duly authorized representative will be required to complete and sign a written receipt satisfactory to the BuyBoard Administrator before the proposal will be released. The decision of the BuyBoard Administrator relating to matters concerning withdrawal of a Proposal is final.

Proposer may resubmit the 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 Proposer 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 Proposer 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 in the Proposal Invitation instructions) at the Proposal Due Date time shall be deemed final, conclusive, and irrevocable; and no Proposal will be subject to withdrawal, amendment, or correction by a Proposer 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 Agreement and Signature form, which is fundamental to and incorporated into this Proposal Invitation, requires Proposer to certify to certain matters. Pursuant to and in accordance with such Proposer's Agreement and Signature form, and in addition to the matters set forth therein, Proposer certifies to the following with respect to this Proposal Invitation, the Proposal, and any Contract awarded under this Proposal Invitation.

##### **(a) Non-Collusion Certification**

Proposer agrees and certifies to the following, and understands that the penalty for violating this non-collusion certification will be the immediate disqualification of Proposer's Proposal:

- 1) Neither Proposer nor any business entity represented by Proposer 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 Proposer, 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) Proposer 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 Proposer, nor any business entity represented by Proposer, 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 Legal, Ethical, and Other Matters**

Proposer agrees and certifies to the following:

- 1) Proposer 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) Proposer has a high degree of integrity and business ethics, and a satisfactory record of performance;
- 3) Proposer 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) Proposer 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 Proposer would in no other way whatsoever be disqualified to propose or receive any award or Contract related to this Proposal Invitation, and Proposer will comply with any reasonable request from the Cooperative to supply information sufficient to substantiate the foregoing representations;
- 5) 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 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 Proposer's most favored customer under equivalent circumstances;
- 7) The Proposal complies with all federal, state, and local laws concerning these types of products or services, and Proposer will continue to comply with any applicable federal, state, and local laws related to Proposer's activities in connection with the Contract;
- 8) Proposer 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;
- 9) Proposer will maintain, at Proposer'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 Proposer or its employees or its agents of any service under the Contract; however, the existence of such insurance does not relieve Proposer of full responsibility and liability for damages, injury, death, or loss as described or as otherwise provided for by law; and
- 10) Any false statement contained in the Proposal is a material breach of contract which will void the Proposal or any resulting Contract, and subject Proposer to removal from all proposal lists, and possible criminal prosecution.



**13. Proposal Signatures**

Proposer must sign its Proposal in strict accordance with the Cooperative’s instructions, including having an officer duly authorized by Proposer 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 Proposer. A facsimile or imaged signature will be deemed an original.

**14. No Reimbursement**

Proposer understands and acknowledges the Cooperative will not reimburse or pay Proposer for any expenses Proposer 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 will include Proposer’s responses to the forms and other attachments included or associated with this Proposal Invitation, including but not limited to Proposer’s responses to the Proposal Invitation Questionnaire. 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 makes competitive and indefinite quantity awards to Proposers that give the same or better discounts/pricing than they give their best governmental clients. 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 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 regards 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.

### **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 the 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 at the collective disposal of the Cooperative and Cooperative members to evaluate Proposals. The final decision as to the best overall offer, including as to price 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, COOP-851, which is available from the BuyBoard Administrator upon request. Pursuant to COOP-851, 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 (5<sup>th</sup>) 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 (5<sup>th</sup>) 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 Proposer 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 the successful Proposer, whereupon the Contract becomes binding and enforceable. The Contract is then utilized by a Cooperative member by the member issuing a signed 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 or Services) of these Terms and Conditions, 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 (The BuyBoard) of these Terms and Conditions, 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.

Cooperative members and Vendors do not have the authority to modify these Terms and Conditions. By submitting a Proposal, Vendor specifically agrees that these Terms and Conditions shall apply and that it shall not seek to impose on a Cooperative member additional terms and conditions or ancillary agreements that are inconsistent with, or intended to supersede, these Terms and Conditions. Any attempt by a Vendor to impose terms and conditions on a Cooperative member that are inconsistent with or intended to supersede these Terms and Conditions which were not submitted by Vendor as a deviation with its Proposal and approved by the Cooperative shall be an event of default under the Contract and grounds for termination of Vendor's Contract. However, a Cooperative member may add terms to a Purchase Order



and/or require a Member Construction Contract with terms that are consistent with these Terms and Conditions and are acceptable to Vendor. A Cooperative member may require a performance and/or payment bond from Vendor as may be required by law or deemed necessary or appropriate. Additionally, a Cooperative member may require Vendor to carry and provide proof of such insurance as may be required by state or local law or policy. Individual Cooperative members may in certain circumstances require background checks on Vendor employees who will have direct contact with students or staff, or for other reasons, and may require Vendor to pay the cost of obtaining criminal history record information. To the extent of any conflict between these Terms and Conditions and requirements contained in any Cooperative member Purchase Order or Member Construction Contract, the stricter requirements on the Vendor shall apply. In the event of differing but equally stringent requirements, the Cooperative member Purchase Order or Member Construction Contract shall govern over the requirements in the Proposal Invitation.

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

**It is the Cooperative's intent that other governmental entities throughout the United States, as well as 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**

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 (2) additional one (1)-year terms as provided for in this section E.1. A reference to "Contract term" in these Terms and Conditions means the initial term and any renewal term.

The Contract shall govern the Vendor's and the Cooperative member's rights and obligations with respect to any Purchase Order issued during the Contract term and afterwards, with respect to any Purchase Order or purchase bound by the Cooperative member for specified goods or services **before** the Contract award period ended.

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 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.

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.

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

Vendor must 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.



Vendor must provide any applicable performance and payment bonds as required by law, including 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. Conformity to Item Specifications and Contract Award**

Vendor warrants that the products or services Vendor provides under the Contract 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 are free from all defects in material, workmanship and title. If Vendor deviates from an item specification, including delivering a product other than the specific brand and model of the product awarded, the ordering Cooperative member may reject the product when delivered and terminate the purchase order, at no cost or penalty to the member. Vendor further warrants that all products and services 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 awarded products 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 may include line item pricing, discount off catalog or pricelist, not-to-exceed hourly labor rates, or other pricing structure as set forth in the Proposal Invitation. Except as provided in this section E.4 or otherwise in this Proposal Invitation, Vendor shall hold its awarded pricing firm during the Contract term.

For awards based on discount off catalog or pricelist, Vendor may submit updated pricelists or catalogs reflecting manufacturer or similar market-wide price increases that occur during the Contract term to the Cooperative, and shall provide upon request such supporting documentation, including manufacturer documentation, as the Cooperative may require. Such pricelists or catalogs must be provided in the same format required by the Proposal Invitation for catalogs and pricelists submitted with Proposals. All pricelist or catalog changes must be supported by manufacturer price changes or similar market changes. The Cooperative reserves the right to reject any or all catalog or pricelist price changes as it deems to be in the best interest of and to provide best value to Cooperative members. Unless otherwise provided in the Proposal Invitation, no catalog or pricelist price increases, including website-based catalogs or pricelists, will be permitted or accepted within 180 days of Vendor's Proposal submission or within 180 days of submission of a prior revised catalog or pricelist. Updated pricelists or catalogs must be limited to awarded products or the pricelist or catalog may be rejected by the Cooperative in its entirety. Vendor must provide the Cooperative with prior notice of catalog and pricelist changes. Until such time as updated pricelists have been submitted to the Cooperative, or in the event the Cooperative rejects or determines further information is required before accepting a revised catalog or pricelist, Vendor shall be required to continue to apply the prior catalog or pricelist pricing, with applicable discount, to Cooperative members.

For awarded pricing based on hourly labor rates, Vendor may not exceed the awarded pricing during the Contract term unless changes to prevailing wage rates under state, local, or federal law applicable to the work to be performed require higher rates. In such event, the Vendor must notify the Cooperative and provide documentation supporting the required labor rate increase.

All awarded discounts must remain firm during the Contract term.



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In the event Vendor decreases the price of awarded products or services for any or all of its other customers in similar market circumstances below the Contract price, Vendor must offer such decreased pricing to Cooperative members.

During the Contract term, Cooperative members may negotiate with Vendor, through the BuyBoard request for quotes (RFQ) function or otherwise, to obtain lower prices for awarded products or services based on volume or other factors.

If it is determined that a Vendor has sold products or services 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 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 48" 4-way pallets 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) 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; (b) are itemized and shown separately on the member's invoice; and (c) 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 ten (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, 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.

#### **(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 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 member's purchase order 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 or these Terms and Conditions and 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 (5) 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. Substitutions**

Vendor's Proposal must specify the products or services Vendor proposes to provide under each category of the Proposal Invitation specifications. Vendor shall only be permitted to provide those products or services specified for categories under which Vendor is awarded under the Contract. Except as provided in this section E.8, the Cooperative will not accept additions or substitutions to any of the product(s) listed in the Proposal after a Notice of Award has been issued.

If an awarded product or catalog of products is discontinued by the manufacturer and the same manufacturer offers an equivalent replacement product, or if a catalog of products is updated by the manufacturer with products within the same Proposal Invitation specifications and category(ies) for which Vendor was awarded, Vendor may substitute the replacement product or updated catalog for the awarded product or catalog. Vendor shall submit all reasonable supporting documentation requested by the Cooperative's Administrator regarding any substitutions or catalog updates. The Cooperative reserves the right to reject, in its sole discretion, any product or catalog substitution.

#### **9. Product and Service Guarantees and Warranties**

Vendor must not limit or exclude any implied warranties and shall extend such warranties on the awarded product, as well as 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) of these Terms and Conditions or unless a different warranty is required by a Cooperative member Purchase Order or supplemental contract, a minimum of a ninety (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.

Vendor shall respond to any reasonable requests for information from the Cooperative, its administrator, or a Cooperative member in regards to concerns regarding public health or safety regarding awarded products, including such documentation as may be reasonably requested. In the event of any product recalls affecting awarded products, as soon as practicable, Vendor shall notify in writing both the Cooperative and any Cooperative members who made purchases from Vendor for such recalled products of the recall and proposed action. At a minimum and without waiving any other requirements under law or Cooperative member purchase order, Vendor shall be required with respect to purchasing Cooperative members to take all action required by law or any 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, and Designated Dealers**

If tangible goods are included as part of Vendor's Proposal and Vendor delivers products out of more than one warehouse or distribution center, all warehouses or distribution centers involved in the distribution plan must carry or have timely access to all awarded items and must be able to respond to orders in a timely manner. Unless otherwise specified in this Proposal Invitation, product substitutions are not allowed, and the involvement of multiple distribution centers does not alter the restriction against product substitution.

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 or designated dealers, and the Cooperative and its members will not be required to deal with multiple Vendor contacts for overall contract management.

If Vendor is a manufacturer that sells products through a dealer network, Vendor may request to designate a dealer or multiple dealers ("Designated Dealer" or "Designated Dealers") to receive Cooperative member Purchase Orders on Vendor's behalf by completing and submitting to the Cooperative's administrator the information required on the Manufacturer Dealer Designation form contained in the Proposal Invitation, and/or such other form or information as the Cooperative's administrator may reasonably require.

Regardless of any Designated Dealers submitted by Vendor, Vendor specifically agrees and acknowledges that any such designations are for Vendor's convenience only and shall not relieve Vendor of any obligations under the Contract, including payment of Cooperative service fees on all Purchase Orders submitted to Vendor or any Designated Dealer. Vendor shall remain responsible and liable for all of its obligations under the Contract, and the performance of both Vendor and any of Vendor's Designated Dealers under and in accordance with the Contract and remain subject to all remedies for default thereunder, including, but not limited to suspension and termination of Vendor's Contract for nonpayment of service fees.

Further, Vendor acknowledges and agrees that, if Vendor opts to submit Designated Dealers under the Contract, Vendor is responsible for ensuring the accuracy of, maintaining, and updating the Designated Dealer information provided to the Cooperative and ensuring and confirming such information has been received by the Cooperative's administrator in such form as the Cooperative's administrator may reasonably require. Vendor authorizes the Cooperative, in its sole discretion, to list any Vendor Designated Dealers in the BuyBoard system and to receive Purchase Orders directly from Cooperative members on behalf of Vendor. To the extent a Vendor with Designated Dealers receives a Purchase Order





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directly, it shall be the responsibility of Vendor to appropriately process such Purchase Order in accordance with the Contract, including but not limited to timely forwarding such Purchase Order to a Designated Dealer for processing.

The Cooperative reserves the right, in its sole discretion, to refuse addition of, or request removal of, any Designated Dealer, and Vendor agrees to immediately require such Designated Dealer to cease accepting Purchase Orders or otherwise acting on Vendor's behalf under the Contract. Further, the Cooperative's administrator shall be authorized to remove or suspend any or all Designated Dealers from the BuyBoard at any time in its sole discretion.

#### **11. The BuyBoard**

The awarded Contract will be posted on the BuyBoard website as an online electronic catalog(s). **Except as expressly authorized in writing by the Cooperative's administrator, neither Vendor nor any Vendor Designated Dealer is authorized to process a Purchase Order received directly from a Cooperative member**, and a Cooperative member that wishes to procure goods or services under the Contract will initiate a Purchase Order through the BuyBoard, which will be transmitted to Vendor or Vendor's Designated Dealer(s). All Purchase Orders generated by or under the contract must be processed through the BuyBoard. To the extent that a Vendor or a Vendor Designated Dealer erroneously processes a Purchase Order received directly from a Cooperative member without express written authorization from the Cooperative's administrator, such actions may be considered in breach of Vendor's obligations under the Contract but 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, the intent of the Cooperative member to purchase through the Cooperative contract being paramount. Vendor and any Vendor Designated Dealer 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. To the extent that a Vendor is authorized in writing by the Cooperative administrator to process a Purchase Order received directly from a Cooperative member, Vendor shall be required to comply with all conditions imposed by the Cooperative as a part of such authorization.

#### **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 an 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 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 in writing, with supporting documentation, no later than the last day of the Dispute Period. Vendor agrees to cooperate, and require any Vendor Designated Dealer(s) and billing agent to cooperate, with the Cooperative in attempting to reconcile and resolve disputed fees, and shall provide such reasonable information and documentation as the Cooperative may require to review the disputed fees to the satisfaction of the Cooperative administrator's staff. Any service fees for which the Cooperative 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, COOP-852, Vendor Invoicing and Collections.



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's administrator in such form as the Cooperative's 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, or such other documentation regarding those Purchase Orders as the Cooperative's 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 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 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. In no event shall Vendor's obligation to a Cooperative member



under this section E.16 be less than the amount a Cooperative member pays Vendor under the purchase order or Member Construction Contract that gives rise to such obligation.

### **17. Intellectual Property Infringement**

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 or a Cooperative member that alleges that 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, 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, upon its awareness, shall give Vendor prompt written notice thereof. Vendor shall defend, and hold the Cooperative and the Cooperative member harmless, against any such claim or action and shall indemnify the Cooperative 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, 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 ten (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 ten (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:

- i. Delivery of product or services that fail to meet the item specifications;
- ii. Delivery of product or services that are defective or substandard or fail to pass product inspection;
- iii. Delivery of a product substitution, except as specifically authorized;
- iv. Failure to meet required delivery schedules;
- v. Failure to timely supply the awarded products or services at the contract price;
- vi. 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;
- vii. Failure to provide, within a reasonable time and where required by the Contract, information reasonably requested by the Cooperative including, but not limited to, information requested under section E.12 of these Terms and Conditions;
- viii. Processing a Purchase Order received directly from a Cooperative member, without prior written approval from the Cooperative's administrator;
- ix. 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);
- x. Selling non-awarded products or services under the Contract or any other BuyBoard contract with Vendor;



- xi. Vendor refusal, inability or loss of ability, to offer or provide awarded goods or services to Cooperative members in awarded regions or states unless caused by a Force Majeure event pursuant and subject to section E.19; or
- xii. 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 Contract 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 or its administrator may temporarily inactivate (suspend) Vendor from the BuyBoard website and as a BuyBoard vendor, suspend or remove any Vendor Designated Dealer from the BuyBoard website, or require removal of an awarded product or service with or without prior notice to Vendor, if the Cooperative or its administrator determines that a breach under the Contract or any other BuyBoard contract with Vendor, including nonpayment of service fees, or a potential public health, policy, or safety issue warrants such action, and the temporary inactivation will remain in effect pending further action or termination of the Contract by the Cooperative or its administrator. 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 products and services sold 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, but may terminate a Purchase Order or Member Construction Contract or refuse to accept delivery as provided for in these Terms and Conditions or for Vendor's material breach of a term or condition included in a Cooperative member Purchase Order or Member Construction Contract. 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; 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 a 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 regards 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 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.



If Vendor ceases distribution of an awarded product for any reason during the Contract term, including ceasing distribution in one or more regions or states designated by Vendor in its Texas Regional Service Designation or State Service Designation forms, and the Cooperative determines that continued availability of the product provides best value to Cooperative members, the Cooperative reserves the right to place the manufacturer of such product on the BuyBoard for the remainder of the Contract term for any or all regions or states in which Vendor has ceased distribution, in which event Vendor's Contract for such product will be deemed assigned to the product manufacturer.

## **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 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 required pursuant to section B.13 (Proposal Signatures) of these Terms and Conditions with respect to Proposals and related documentation or 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, facsimile or imaged 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.