

**TO:** Vendor Addressed

**FROM:** Region 7 Purchasing Cooperative Dept.

**DATE:** August 3, 2022

**RE:** Request for Proposal: Catalog Discount Bid: Copy Machines CM2223

The category up for bid is Copy Machines.

**NOTE:** Please be aware that there is a required \$25.00 administrative fee for every bid processed.

All information should be entirely completed. **Failure to do so may result in a bid disqualification.**

By submitting a proposal, respondent is seeking to enter a legal contract with the Cooperative. As such, respondent must be an individual or legal business entity capable of entering a binding contract. Respondents must completely and accurately provide the information requested below or your proposal may be deemed non-responsive.

The following terms and conditions must be reviewed by the respondent. Failure to do so can produce setbacks and may cause the bid to be null & void if proper certifications, terms, and requirements are not fulfilled. You must submit your bid online by the Submission Deadline Date/Time indicated in the BID TIMELINE.

Thank you for your participation in the bid process and your attention to the information we are requesting. Please contact the Purchasing Cooperative office at [purchasing@esc7.net](mailto:purchasing@esc7.net) or (903) 988-6859 if there are any questions or concerns.

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## 1. General Definitions and Solicitation Information

### 1.1. DEFINITIONS

The following definitions, abbreviations and acronyms may be found in this bid, and shall be interpreted herein as specified below.

- ESC: Education Service Center, Region 7, State of Texas Education Agency Partner
- Cooperative: Region 7 Education Service Center Purchasing & Vendor Services Cooperative
- Member: Educational entity participating in the Region 7 Purchasing & Vendor Services Cooperative, Agency, Education Entity, End User, Membership, Buyer
- Committee: An evaluation committee composed of staff from members involved in the procurement process at local or regional level.
- Vendor: Respondent, Responding individual or firm, Bidder, Offeror, Seller, Supplier
- Bid: Request for Proposal (RFP), Solicitation, Procurement, Response, Contract, Agreement, Specifications
- Party/Participating Party: Cooperative, Member, Vendor
- Award: Qualified vendor(s) selected for approval of this bid, Contract, Agreement, Approved Vendor
- CFR: Code of Federal Regulations
- FAR: Federal Acquisition Regulations
- QMS: Quality Management System of Region 7
- SAT: Simplified Acquisition Threshold
- TDA: Texas Department of Agriculture
- TAC: Texas Administrative Code
- TEC: Texas Education Code
- TFC Texas Family Code
- TGC: Texas Government Code
- UCC: Uniform Commercial Code
- USC: United States Code
- USDA: United States Department of Agriculture
- Approve(d): Acceptable to the "authority having jurisdiction".
- May: Indicates a permissive use or an acceptable alternative to a specified requirement.
- Must: Indicates a mandatory requirement.
- Shall: Indicates a mandatory requirement or action.
- Should: Indicates a recommended or advised response to a specified requirement.

### 1.2. INTRODUCTION

#### 1.2.1. PURPOSE OF THE REQUEST FOR PROPOSAL (RFP)

Region 7 ESC Purchasing Cooperative is inviting proposals from responsible and responsive vendor(s) for furnishing the merchandise, supplies, services, installation and/or equipment set forth in this bid proposal. To the extent possible, this solicitation meets the compliance of state and federal laws, rules, and legislation. See STATUTORY AND NATIONAL POLICY REQUIREMENTS.

#### 1.2.2. BACKGROUND INFORMATION

Region 7 ESC is one of 20 regional education service centers statewide that participates in the planning, development, coordination, implementation, and evaluation of innovative educational programs. Created in 1967, Education Service Centers (ESCs) do not have tax levying or bonding authority and rely on grants and contracts for funding. Revenues are received from three primary sources: federal, state, and local funds. Region 7 currently serves 102 school districts, the largest number of school districts of any ESC.

#### 1.2.3. STANDARDS OF CONDUCT

Region 7 employees follow the Employees Standards of Conduct as described in ESC 7 DH (Legal) & DH (Local) Employee Standards of Conduct. No employee, officer, or agent may participate in the planning, advertising, selecting, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Chapter 176 of the TGC requires any respondent to complete a CIQ as applicable. The respondent is responsible for disclosing conflicts.

#### 1.2.4. DOCUMENTED PROCEDURES

Cooperative meets the general procurement standards as defined in the Code of Federal Regulations, including but not limited to: CONTRACT MANAGEMENT, which may include: Oversight of contractors' performance, maintaining written standards of conduct for

employees involved in contracting, awarding contracts only to responsible contractors, and maintaining records to document history of procurements. To obtain a copy of the procedures as described in QMS, a written request must be submitted to Region 7.

**1.2.5. LEGAL SOLICITATION NOTICES**

The Cooperative advertises on behalf of all education members. Advertisements are published at a local level with the county seat of each county containing membership.

**1.2.6. PROGRAM INCOME**

The Region 7 Purchasing Cooperative is a locally funded program that does not rely on state or federal funding in support or the facilitation of the Cooperative. Therefore, as a measure toward the continued facilitation and on behalf of our participating members, a vendor administrative fee shall be required of the respondent at time of response. The fee of USD \$25 is payable only by U.S. check or money order or may be submitted through the purchasing online procurement software online as a credit card. Vendor administrative fees are payable to the Region 7 ESC located at 1909 N. Longview Street, Kilgore, Texas, 75662.

**1.2.7. COLLECTION, TRANSMISSION, & STORAGE OF INFORMATION**

Records shall be maintained by Cooperative to sufficiently detail the history of procurement. Cooperative maintains cooperative purchasing online procurement software and retains hard copy records and shall be maintained in accordance with Region 7's adopted records retention schedule. Software and hard copy records are available for review by any federal or pass-through or non-federal awarding agency. These records shall include but are not necessarily limited to the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

**1.2.8. RESPONSE OVERVIEW**

Completed bids must be submitted by the indicated Submission Deadline Date/Time. Attempted submission of electronic bids after the submission deadline date/time will be automatically rejected by the system. Alterations may be made before deadline online only. Hard copy bids received after the Submission Deadline Date/Time will be returned via USPS unopened. Responses may be withdrawn at any time prior to the official opening by emailing purchasing@esc7.net.

After the official opening, responses may not be amended, altered, or withdrawn without approval from the Cooperative. Respondent agrees, if this response is accepted, to furnish any and all items upon the terms and conditions contained herein the specifications of this proposal. If respondent fails to follow bid specifications, the respondent may be removed as a vendor from the Region Purchasing Cooperative.

Online responses must (1) be completed and submitted at 'Step 6: Payment' online; and (2) contain the required authorized official signature in 'ATTACHMENTS', or the response may be rejected. Incomplete and rejected responses will receive an emailed 'Notification of Non-Award' once award has been approved by the ESC Board of Directors.

The period for acceptance of this bid will be sixty (60) calendar days unless a different period is inserted. The Cooperative reserves the right to accept or reject in part or in whole any bids submitted, and to waive any technicalities, and to award bids in the best interest of its members.

**1.3. SCOPE OF BID**

**1.3.1. SCOPE OF MEMBERSHIP**

Proposals are being solicited by the Purchasing Cooperative on the behalf of one hundred and fifty- (152) education entities and three (3) Education Service Centers, covering forty-nine (49) counties and representing approximately 350,000 students. A complete listing and map of membership may be found on the Cooperative's website.

**1.3.2. SCOPE OF RESPONSE**

Bid Number	CM2223
Bid Category	Copy Machines
Submission Deadline Date/Time	September 22, 2022/1:30 p.m.
Opening Date/Time	September 22, 2022, 2022/1:30 p.m.
Bid Type	RFP: Catalog Discount
Estimated Expenditures	\$5,860,401
Previous Award	9 Respondents
Award Valid	October 20, 2022 – October 20, 2023

Responses are solicited for furnishing the merchandise, supplies, services, installation and/or equipment set forth in this bid proposal. The most responsible and responsive vendor(s) will be recommended for approval as directed by the oversight of the Cooperative. Once

catalog discount bids are awarded by the Region 7 Board of Directors, membership can utilize any merchandise, supplies, services, installation and/or equipment provided by the awarded company in response.

**1.3.3. COMMODITY NUMBERS**

The catalog discount bid categories provided by the ESC are comprised of the NIGP commodity book codes and include but are not limited to the below, as provided by <https://mycpa.cpa.state.tx.us/commbook/>:

5	80	193	257	340	440	550	620	691	801	875	920	952	984
10	85	195	260	345	445	553	625	700	803	880	924	953	985
15	90	200	265	350	450	555	630	710	804	883	925	954	988
19	95	201	269	360	460	556	631	715	805	885	926	956	989
20	100	203	271	365	465	557	635	720	810	890	928	958	990
22	105	204	279	370	470	558	640	726	815	895	929	959	992
25	110	205	280	375	475	559	641	730	820	898	931	961	993
31	115	206	285	380	485	560	645	735	825	905	934	962	998
35	120	207	287	385	486	565	646	740	830	906	936	963	
37	125	208	290	390	490	570	650	745	832	907	938	965	
40	135	209	295	393	493	575	652	750	838	908	939	966	
45	140	210	305	395	495	578	655	755	839	909	940	967	
50	145	220	306	400	500	580	658	760	840	910	941	968	
52	150	225	310	405	505	590	659	765	845	911	944	969	
55	155	232	312	410	510	593	660	770	850	912	945	971	
60	160	233	315	415	515	595	665	775	855	913	946	972	
65	165	240	318	420	520	600	670	780	860	914	947	975	
71	175	245	320	425	525	605	675	785	863	915	948	977	
72	180	250	325	430	530	610	680	790	864	916	949	979	
73	190	251	330	435	540	615	685	795	865	917	950	981	
75	192	255	335	436	545	616	690	800	870	918	951	983	

**1.3.4. ESTIMATED EXPENDITURES**

Expenditures shown are received from membership. Actual costs will deviate. 2 CFR §200.34

**1.3.5. AWARD**

The ESC - Region 7 Board of Trustees shall review, approve, and make recommendations in the best interest of Cooperative and its members.

**1.3.6. CONTRACT TERM**

The award term of the contract shall be for one (1) year from October 20, 2022 – October 20, 2023. Cooperative may, in its sole discretion, exercise the option to extend the contract for up to three (3) additional one (1) year periods. To exercise the option and extend the term of award, Cooperative shall utilize the contact information provided to Cooperative at time of bid submittal to notify respondent.

**1.3.7. NO BID**

Vendors who do not wish to respond but remain on the VENDOR LIST may submit a ‘No bid’ in writing stating the request to the Cooperative prior to the submission deadline. A No Bid form can be found in ATTACHMENTS. More than three (3) No Bid responses may result in removal from the VENDOR LIST.

**1.4. STEPS FOR BID COMPLETION**

**1.4.1. RESPONSE REQUIREMENTS**

Response must include:

- Completion of ONLINE SUBMISSION through the Region 7 Cooperative procurement software.
- Pricing attachment on Step 5 or emailed directly to the Cooperative at purchasing@esc7.net
- Signed ATTACHMENTS.

**1.4.2. ONLINE SUBMISSION**

***Step 1 of 6***

Contact Information: Review & verify all your contact information. Select 'Continue'. To update, select 'Edit Account Details'. Complete & select 'Update'.

**Step 2 of 6**

Terms Acceptance: Select 'Submitting Vendor has reviewed the Standard Terms & Conditions attached to the Summary of this bid.', list residency state. Select 'Continue'.

**Step 3 of 6**

Commodities: Select the commodities that pertain to the respondent.

**Step 4 of 6**

Free Shipping: Free shipping/delivery per campus is required unless otherwise submitted as an exception by respondent.

Number of Store Locations: Multiple storefront locations or multiple representatives.

List Locations: Any additional contact information of multiple locations or representatives.

Net Terms: Input payment terms.

Terms Discount: Input any applicable early or prepay discounts.

Purchase Orders accepted: Check for 'Yes'; Leave Blank for 'No'.

Vendor is a Historically Underutilized Business: Check for 'Yes'; Leave Blank for 'No'.

If yes, a HUB certificate must be received by the Cooperative prior to award. Select 'Continue'.

**Step 5 of 6**

Attachments: Entirely complete the ATTACHMENTS contained in this bid. Scan and 'Choose File' to attach. If you cannot attach, please mail hardcopy or email to purchasing@esc7.net or fax (903) 988-6852. Select 'Vendor understands that failure to remit the signature pages of 'ATTACHMENT' may result in vendor not being recommended for award. Respondents are encouraged to provide pricing, even if low or no estimated quantity is provided. Select 'Continue'.

**Step 6 of 6**

The Cooperative charges respondents a \$25.00 vendor administrative fee. Select 'Select your Payment Method': If paying by credit card: Select 'Credit Card', input information, select 'Pay and Submit Bid'; you will receive an emailed receipt. If you do not receive an emailed receipt, please contact the Purchasing Department. If paying by check or money order: Select 'Check', Select 'Submit Bid to be paid by Check'. An email will be sent with instructions on where to send U.S. issued check or money order.

This will complete your bid submission. You have the option to print your bid submission. This copy will be for the bidder to retain. A notification of award or non-award will be emailed to respondent. If a vendor does not indicate an e-mail address under the Bid Contact information, a notification will be mailed via USPS.

**1.5. GENERAL INFORMATION**

**1.5.1. VENDOR LIST**

Cooperative maintains a listing of all interested respondents with the cooperative purchasing online procurement software. The VENDOR LIST is different than the APPROVED VENDOR LIST. The vendors on the VENDOR LIST have not met the legal procurement requirements.

**1.5.2. APPROVED VENDOR LIST**

Cooperative facilitation of solicitations and subsequent bid approvals create the APPROVED VENDOR LIST. The approved vendor list is composed of qualified vendors on the VENDOR LIST who have responded to and are awarded at least one Cooperative bid. The bid timeline and qualified vendors are maintained on Cooperative website.

**1.5.3. MICRO-PURCHASE**

Cooperative does not facilitate a micro-purchase procurement for members.

**1.5.4. SMALL-PURCHASE**

Cooperative use of the request for proposal: catalog discount method meets the minimum procurement procedures requirements for members. Members are encouraged to utilize the APPROVED VENDOR LIST to obtain multiple quotes from the qualified vendors for amounts under the SAT.

**1.5.5. SEALED BIDS**

Cooperative will practice an IFB (Invitation for Bid) method, as necessary.

**1.5.6. COMPETITIVE PROPOSALS**

Cooperative use of the request for proposal: catalog discount method meets the minimum procurement procedures requirements for members. This procurement method does not eliminate the requirement for formal procurement when required of the member if purchases are made above the SAT.

**1.5.7. NONCOMPETITIVE PROCUREMENT**

In accordance with 2 CFR 200.320(c) Cooperative does not facilitate a micro-purchase procurement for members (1). A patent or copyright does not automatically justify a purchase is exempt from competitive procurement (2)(3). Cooperative does not have the authority to authorize noncompetitive procurement for members (4). Cooperative shall approve a noncompetitive procurement for a request for proposal if evidence of inadequate availability of competition after adequate attempts to receive multiple responses have been made and recorded (5).

**1.5.8. CONTRACT COST AND PRICE**

Cost analysis must be completed by the member before utilizing any procurement method. Cooperative will not complete a cost analysis on member's behalf.

**1.5.9. COOPERATIVE REVIEW**

Cooperative maintains cooperative purchasing online procurement software and is available for review by any federal or pass-through or non-federal awarding agency. Records are retained for a minimum of eight (8) years as described in QMS. To obtain a copy of the procedures as described in QMS, a written request must be submitted to Region 7.

**1.5.10. MONITORING AND REPORTING PROGRAM PERFORMANCE**

Member is responsible for oversight of federal award supported purchase activities in addition to the Federal Research Performance Progress Report. CONTRACT MANAGEMENT maintained by Cooperative or ESC in no way is to negate, invalidate, or disavow member responsibility from MONITORING vendor or cooperative performance.

**1.5.11. RESPONDENT RECORDS RETENTION REQUIREMENT**

In the event any litigation, claim, or audit is started before the expiration contract period, the Respondent contract information related to the contract, as provided by the records retention requirements, must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

**1.5.12. EQUIPMENT**

Equipment as defined by 2 CFR §200.33 or Supplies as defined by 2 CFR §200.94 or Real Property as defined by 2 CFR §200.85 purchased with Federal awards are required to be approved by federal awarding entity or pass-through entity. Members must follow federal guidance in acquisition and disposal of equipment, supplies, and real property.

2. Standard Bid Terms & Conditions

2.1. STANDARD TERMS AND DEFINITIONS

See 1.1 for a complete list and description

2.2. STANDARD BID TERMS

2.2.1. DISCOUNTS AND PRICING

- a. All submitted discounts must be guaranteed for twelve (12) months from the date of the bid award.
- b. Respondents are encouraged to provide pricing, even if low or no estimated quantity is provided.
- c. Respondent shall not include sales tax with any pricing. Members are exempt from Federal Excise Tax, State Tax, and Local Tax. Tax exemption certificates will be furnished upon request by each party.
- d. Respondent agrees, upon issuance and acceptance of this solicitation, to furnish award items at the catalog discount offered and adhere to all subsequent terms and compliance herein this solicitation.
- e. Title to all supplies and equipment shall pass to member upon receipt, except where hidden defects or other bid requirements or specifications are not met.

2.2.2. BID TIMELINE

CM2223 Bid Timeline	Date
Bid Available to Public:	08/03/2022
Deadline for Questions:	09/15/2022
Bid Closes to Submission:	09/22/2022 1:30 pm CT
Bid Opening Date/Time:	09/22/2022 1:30 pm CT
Bid Review/Evaluations:	09/22/2022 – 10/19/2022
Bid Approved by ESC Board:	10/20/2022
Bid Award Expires:	10/20/2022

2.2.3. OPENING

Vendors are invited to be present at the opening of this bid on the date and hour specified.

2.2.4. EVALUATION

The determination of the award will be based on information supplied by respondent and information obtained, where necessary, through member contracts. Responses shall pass/fail will be based on (1) including compliance, and (2) meeting a total minimum of 20% of the evaluation criteria below.

Factors which must be considered by the Cooperative in making the award of bids include:

Evaluation Criteria	Weight
Discounts Offered	30%
Compliance with Terms	20%
Net Terms Provided	15%
Free Shipping	15%
Exclusions of Bid	10%
Purchase Orders Accepted	10%
Total	100%

Any additional criterion shall be requested by the Cooperative or Committee in the solicitation or during the evaluation of responses. Response to Cooperative or Committee request shall be prompt; no more than three (3) business days to be received by Cooperative. For clarification of evaluation, contact the Purchasing Department at purchasing@esc7.net.

2.2.5. SAMPLES

Upon Committee evaluation and review of submitted bids samples may be requested. Samples must be from line-runs, delivered to designated locations at vendor’s cost. Samples needed for a proposal to be evaluated properly must be delivered within ten (10) working days from the time the vendor is notified.

2.2.6. AWARD RETENTION

Bid awards are maintained by the Cooperative for a minimum of eight (8) years and can be found in the Purchasing Cooperative’s website.



### 2.2.7. **CONTRACTS**

The Cooperative will not enter a purchasing contract on behalf of any participating member. Purchasing contracts resulting from this contract award shall strictly adhere to the statutes set forth in the UCC as adopted in the State of Texas, except as otherwise provided in this bid or in statutes pertaining specifically to the State. Resulting purchasing contracts shall be governed by the laws of the State of Texas.

### 2.2.8. **INSURANCE AND OTHER SECURITY**

Respondent may provide the Cooperative with current certificates of insurance and bonding information or other proof acceptable to the Cooperative. Respondent is responsible for both federal and state unemployment insurance coverage and standard Worker's Compensation insurance coverage. Neither the Cooperative nor the member shall be liable to the vendor or its employees for any Unemployment or Workers' Compensation coverage, or federal or state withholding requirements. Respondent shall pay all costs, penalties, or losses resulting from vendor's omission or breach of this bid. Respondent also represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to the Cooperative. Respondent represents and warrants that it shall maintain the minimum insurance coverage during the term of this award and shall provide the Cooperative with an executed copy of the policies immediately upon request.

## 2.3. **STANDARD BID CONDITIONS**

### 2.3.1. **CLARIFICATIONS**

Any questions regarding this bid proposal should be delivered in writing to the Purchasing Cooperative Dept., Region 7 Education Service Center, 1909 Longview Street, Kilgore, Texas, 75662, fax (903) 988-6852, email purchasing@esc7.net.

### 2.3.2. **INCONSISTENCIES**

Should any inconsistencies be discovered in the response or terms of this bid, the UCC shall prevail. Inquiries regarding this bid proposal should be delivered in writing to the Purchasing Cooperative Dept., Region 7 Education Service Center, 1909 Longview Street, Kilgore, Texas, 75662, fax (903) 988-6852, email purchasing@esc7.net.

### 2.3.3. **ORAL AGREEMENTS**

No oral comment, utterance, or response made by any employee, member, or agent of Region 7 or any member of the Cooperative shall be considered factual or binding with regard to this bid, or any CONTRACTS awarded as a result of this bid. Valid and binding terms, conditions, provisions, changes or clarifications, or requests thereof, shall ONLY be communicated in expressed, written form.

### 2.3.4. **MODIFICATION**

Each participating party may modify conditions and specifications by mutual agreement with all participating parties, both at the time of acceptance of this bid offer as so modified, and subsequent thereto. Expressed, written 'Request of Modification' must be received by the Cooperative. The Cooperative will confirm receipt, review request, and make decision of acceptance/denial of modification within ten (10) business days. The Cooperative reserves the right to deny/approve modifications in the best interest of its members.

### 2.3.5. **CONTACT RESTRICTIONS**

Vendor shall restrict all contact with any other ESC department and member regarding this solicitation once the bid is available to vendors and through the evaluation period. Non-award vendor(s) shall restrict all contact with any member regarding the award for the duration of the award.

### 2.3.6. **DEVIATIONS**

By submitting this bid, the respondent agrees to all terms, conditions, and compliance requests set forth by the Cooperative and agree that no terms or conditions will be altered by any party, unless mutually agreed upon prior to the awarding of the bid except in the event of FORCE MAJEURE. All state and federal compliance requirements in this bid are not negotiable or flexible. Failure to comply with the criteria set forth in the Terms and Conditions of this bid will result in the vendor's bid to be null & void.

### 2.3.7. **ADDENDUMS**

Any interpretations, corrections, additions, or changes to this bid will be communicated to respondent by the issuance of an addendum. It is the responsibility of the respondent prior to submitting the bid to determine whether an addendum was issued.

### 2.3.8. **LATE SUBMITTALS**

Respondent must submit a response prior to the posted deadline to be considered for award. Late submittals cannot be made through the purchasing online procurement software and will not be accepted by hardcopy or e-mail after the specified closing date and time in this request for proposal.

## 2.4. FEDERAL BID CONDITIONS

### 2.4.1. STATUTORY AND NATIONAL POLICY REQUIREMENTS

Cooperative complies with all federal requirements as applicable to non-federal procurement listed in the CFR included in this bid. Federal compliance must be agreed upon by the Respondent. This contract is binding, and state and federal compliances are non-modifiable by Respondent. Executive Orders, amendments and changes in legislation pertaining to this contract will be amended if/as necessary. Local compliances and terms of this contract can be modified only in expressed and mutual agreement with Cooperative and Respondent, and as necessary, members of Cooperative.

### 2.4.2. DUPLICATE PURCHASES

Acquisition of unnecessary or duplicative items must be avoided. Consideration should be given to consolidating or dividing procurements to obtain a more economical purchase. When appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

### 2.4.3. LEASE

Procuring Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs shall be utilized.

### 2.4.4. ENGINEERING

Value engineering clauses may be used in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

### 2.4.5. AWARD

Contracts shall only be awarded to responsible respondent(s) possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources based on the EVALUATION.

### 2.4.6. TIME AND MATERIAL AWARDS

Time and material type contracts as defined by may be used only after a determination that no other contract is suitable.

### 2.4.7. RESPONSIBILITY

Cooperative and members shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to: Source evaluation, protests, disputes, and claims. These standards do not relieve the member of any contractual responsibilities under its contracts. Cooperative will not substitute its judgment for that of the member unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction. An interested party must submit a protest in writing referencing the bid title and number to Region 7. The ESC must disclose information regarding the protest to TEA or other awarding agency. 2 CFR § 200.318(k). The protestor must comply with 19 TAC §30.2002. Procedures for Protests, Dispute Resolution, and Appeals Relating to Purchasing and Contract Issues as outlined.

### 2.4.8. COMPETITION IN SUBCONTRACTING

Respondent awarded any contract shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

### 2.4.9. COMPETITION

All Cooperative procurement processes comply with full and open competition.

### 2.4.10. INDEMNIFICATION

- a) Cooperative will not guarantee member purchases to any award vendor(s).
- b) Cooperative will not enter purchasing contracts on behalf of member(s) with any award vendor(s).
- c) Cooperative will not oversee, maintain, or manage any member purchase to any award vendor(s).
- d) Cooperative does not ensure Request for Proposal Catalog: Discount Bids comply with the 'price or rate quotations' outlined in 2 CFR § 200.320 in conjunction with the SAT. 'Best Value' documentation is provided to all members.
- e) Region 7 ESC shall not be liable to any Respondent, person or entity for any losses, expenses, costs, claims or damages of any kind:
  - i) Arising out of, or by reason of, or attributable to, the Respondent responding to this bid.
  - ii) As a result of the use of any information, error or omission contained in this bid document or provided during the bid process.

- f) Cooperative is not responsible for compliance with additional local state, and federal guidelines that are not outlined in this bid documentation. The responsibility of implementation and oversight for local, state, or federal laws must be obligated to the members.

#### 2.4.11. **DISQUALIFICATION**

Respondent may be disqualified before or after the proposals are opened, upon evidence of collusion with the intent to defraud, arbitrary actions during the procurement process, or evidence of intent to perform other illegal activities for the purpose of obtaining an unfair competitive advantage. All procurement transactions are conducted in a manner providing full and open competition. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals will be excluded from competing for such procurements.

#### 2.4.12. **DESCRIPTION OF PRODUCT SPECIFICATIONS**

Cooperative utilizes catalog discount bids as described in FASRG Module 5 Purchasing. RFP: Catalog discount bids are awarded as multiple-vendor award contracts. Therefore, no product specifications are available in this bid and must be provided upon request by member throughout the duration of award. Items that are brand-labeled are to be considered 'or equal'. Brand name will not affect award selection

#### 2.4.13. **BUY AMERICAN**

Cooperative may apply domestic preference on products produced and/or manufactured in the United States. In compliance with the "Buy American" provision, products substantially produced in the United States will be accepted. Substantially produced is defined as being greater than 51% of the final processed product consists of agricultural commodities that were grown domestically. As required by the Buy American provision, all products must be of domestic origin as required by 7 CFR Part 210.21(d). Exceptions to the Buy American provision should be used as a last resort; however, an alternative or exception may be approved upon request. To be considered for the alternative or exception, the request must be submitted in writing to a designated official, a minimum of 5 day (s) in advance of delivery. The request must include the: a) Alternative substitute(s) that are domestic and meet the required specifications: i) Price of the domestic food alternative substitute(s); and ii) Availability of the domestic alternative substitute(s) in relation to the quantity ordered. b) Reason for exception: limited/lack of availability or price (include price): iii) Price of the domestic food product; and iv) price of the non-domestic product that meets the required specification of the domestic product. Members are encouraged to verify State Agency and Federal requirements to ensure compliance.

#### 2.4.14. **GEOGRAPHIC PREFERENCE**

Cooperative may apply preference to agricultural products produced, processed, or grown in Texas if the cost to the school district is equal and the quality is equal; if agriculture products produced, processed, or grown in Texas are not equal in cost and quality to other products, the member shall give preference to agriculture products produced, processed, or grown in other states of the United States over foreign products if the cost to the member is equal and quality is equal; a member that purchases vegetation for landscaping purposes, including plants, shall give preference to Texas vegetation if the cost to the school district is equal and the quality is not inferior. Preferences must be explicitly claimed by Respondent and may not be applicable in procurements and/or contracts involving federal funds unless the procurement and/or contract involves unprocessed locally grown or locally raised agricultural products for use by members.

#### 2.4.15. **EVALUATION**

The following factors carry no weight on evaluation criteria of a catalog discount bid: (a) Unit price, (b) total bid price, (c) delivery date, (d) results of testing samples, (e) special needs of each participating entity, (f) quality of goods, (g) vendor's past performance record, (h) technical assistance present and past, (i) vendor's follow up of problems once notified.

Factors which may be considered by the Cooperative in making the award include: (a) The quality, availability, and adaptability of contractual services to the particular use required; (b) The number and scope of conditions, if any, attached to the bid response; (c) the ability, capacity, and skill of the respondent to perform to the contract or provide the associated service required; (d) whether the respondent can perform the contract or provide the service promptly, or within the time required, without delay or interference; (e) the character, responsibility, integrity, reputation, and experience of the respondent; (f) The quality of performance of previous contracts (and associated services); (g) the previous and existing compliance by the respondent with the State of Texas laws relating to the contract (or associated services); (h) the sufficiency of the financial resources and ability of the respondent to perform the contract or provide the service; (i) the ability of the respondent to provide future maintenance, repair parts, and associated service for the equipment provided by the contract; (j) the successful respondent for technology related line-item bid categories must have a minimum of three (3) trained and certified computer technicians available for all members participating. Copies of certification shall be required upon award of bid.

#### 2.4.16. **ACCEPTANCE**

Once responses are received, they will be opened, evaluated, and either accepted or rejected by Cooperative. Awards will be based on the criteria outlined within this request for proposal. Awards are approved by the ESC 7 Board of Directors and released on the stated approval date. Respondents will then be notified of Cooperative's decision.

### 3. Standard Purchase Terms & Conditions

#### 3.1. GENERAL TERMS AND DEFINITIONS

See 1.1 for a complete list and description.

#### 3.2. STANDARD PURCHASE TERMS

##### 3.2.1. **NOGA**

All contracts, agreements, and lease purchases that are to be paid with federal awards for each participating party shall strictly adhere to the regulations set forth in the Financial Accountability System Resource Guide (FASRG) of the Texas Education Agency (TEA), and the Education Department General Administrative Regulations (EDGAR) of the U.S. Department of Education. These requirements include but are not limited to (RE: Code of Federal Regulations [CFR Appendix II Part 200]):

- a. Contract is effective upon receipt by the member of the Notice of Grant Award (NOGA)
- b. Award must maintain an award status for the duration of the grant period of availability.
- c. All services must be completed in the duration of the grant period of availability.
- d. Services must be invoiced monthly after services are received

##### 3.2.2. **FORMATION OF CONTRACT**

A response does not become a contract unless and until the response is accepted by the Cooperative through the issuance of a written Notice of Award to the successful vendor(s), whereupon the Contract becomes binding and enforceable. The Contract is then utilized by buyers for the awarded products and/or services. Seller must honor all purchase orders issued by buyers. The Cooperative shall maintain contract documents in electronic format for the duration of the CONTRACT TERM.

##### 3.2.3. **NON-EXCLUSIVE CONTRACT**

The Cooperative reserves the right to award multiple contracts for any bid solicited. In an effort to promote fair and open competition, buyers may access the multiple-vendor awards resulting from Cooperative solicitation to obtain pricing from more than one source.

##### 3.2.4. **POINT OF CONTACT**

Award vendor is responsible for (a) maintaining contact with members, (b) updating point-of-contact information on the Cooperative website by accessing vendor's account, (c) notifying Cooperative of any changes to contract contact information or changes in business contact information; including but not limited to: (1) federal tax identification, (2) Sell or closing of business, (3) Change in order, billing, and additional contract contact information.

##### 3.2.5. **FINANCIAL REPORTING**

Seller must track buyer purchases with an internal tracking system and make available to Cooperative when expressly requested. Information pertaining to the contract for purposes of inspecting, monitoring, auditing, or evaluating may be requested by Cooperative or buyers for a time period of seven (7) years upon contract expiration.

##### 3.2.6. **INVOICES**

Invoices shall be sent directly to buyer. Payments are processed after each business office has been notified that the items have been received in good condition and shipments are complete. Invoices must detail the items delivered and must reference the member's purchase order number for speed in processing. See SHIPPING.

##### 3.2.7. **DELIVERY**

All delivery charges - freight, inside delivery, installation, are included in prices. Delivery will be F.O.B. Designation. See SHIPPING for details.

##### 3.2.8. **SHIPPING**

Seller will package goods in acceptance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows: (a) Vendor's name and address, (b) Consignee's name, address, and purchase order or purchase release number, (c) Container number and total of containers, e.g. box 1 of 4 boxes and (d) The number of the container bearing the packing slip.

- a. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation cost and to conform to requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
- b. Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.
- c. The title and risk of loss of the goods shall not pass to Buyer until Buyer receives and takes possession of the goods at the point or points of delivery.
- d. Free on Board (F.O.B.) Destination Freight Prepaid unless delivery terms are specified otherwise in bid submission. Buyer agrees to reimburse seller for transportation costs in the amount specified in response or actual costs, whichever is lower, if the quoted

delivery terms do not include transportation costs, Buyer shall have the right to designate what method of transportation shall be used to ship goods.

- e. Every tender or delivery of goods must fully comply with all provisions of this bid as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender, provided, where the time for performance has not yet expired, the seller may seasonably notify buyer of intention to cure and may then make a conforming tender within the contract time but not afterward.
- f. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency". Any change thereto shall be effected by modification as provided for in TERMINATION FOR CAUSE/ DEFAULT hereof. The terms of this agreement are "NO ARRIVAL, NO SALE".
- g. Buyer shall have the right to inspect the goods at delivery before accepting them.
- h. Buyer shall have the right to cancel for default all or any part of the un-delivered portion of this order if seller breaches any of the terms hereof including warranties of seller or if the seller becomes insolvent or commits acts of bankruptcy or in the event of FORCE MAJEURE. Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.

### 3.2.9. **HANDLING**

Some members may require special handling of the merchandise they will purchase throughout the year. Example: Some members may wish to have each teachers' order packed individually. If a surcharge is to be added please indicate what the charge will be, if any, in the bid submission.

### 3.2.10. **RESPONSIBILITY**

It is the responsibility of the awarded vendor and personnel of the awarded vendor to:

- a. Set up delivery arrangements with each member to meet buyer's needs, in accordance with SHIPPING and DELIVERY terms addressed herein.
- b. Acceptable range of days for lead time not to exceed one calendar month from date of order.
- c. Arrange delivery times with buyer to span the delivery window, between 7:00 A. M. - 2:00 P. M. Monday through Friday of any given week, excluding holidays.
- d. When possible, in the event of an unanticipated school closure, vendor will receive notice from member within two (2) days of delivery and delivery will be moved or canceled per the member's request.
- e. The above terms and conditions are in addition to and in no way replace or override the Standard Purchase Terms & Conditions.

### 3.2.11. **SUBSTITUTIONS**

In the event ordered item(s) are substituted by the award vendor without prior approval of member, the member may request the substituted item(s) be picked up no later than five (5) business days from request of member and invoicing updated accordingly. In addition, the Cooperative may opt to exercise the Uniform Commercial Code "The Right to Remedy" and purchase the product(s) from another vendor and charge back the difference to the awarded vendor at their discretion. Reference: Uniform Commercial Code 2/Sales

### 3.2.12. **ANTICIPATED CHANGES**

Changes to the items offered under this contract may be included with respect to: (a) product changes arising from (1) product discontinuation, (2) product reformulation, (3) manufacturer closures; (b) price changes arising from (1) economic changes, (2) product discontinuation; (c) membership changes by (1) an entity joining the cooperative, (2) entity discontinuing cooperative membership. Vendor warrants no material change of award contract will be accepted. A material change is described as: Exorbitant requests for cost increase (more than 25% of original quoted price to member). Material changes shall require the Cooperative to review the award. If lack of competition is found, vendor award status may be withdrawn.

### 3.2.13. **VENDOR PERFORMANCE DEFICIENCY**

Continuing non-performance of the award vendor in terms of specifications shall be a basis for the termination of award vendor status. Cancellation by the ESC or any member may be made upon thirty (30) calendar days' written notice to the awarded vendor. The Cooperative or any member shall not pay for work, equipment, or supplies which are unsatisfactory. Vendor shall be given a reasonable opportunity (30 calendar days) before termination, to correct the deficiencies. This, however, shall in no way be construed as negating the basis for termination for non-performance. Cooperative does not approve individual member purchasing contracts but requests a Vendor Performance Deficiency completed by members as needed to provide oversight in awards.

#### 3.2.14. **DELEGATION**

No right or interest in this contract shall be assigned or delegation of any obligation made by vendor without expressed permission of the member. Any attempted assignment or delegation by vendor shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

#### 3.2.15. **PENALTIES**

The Cooperative may act if awarded vendor is unable to fulfill or comply with the terms and conditions set forth in this bid; including but not limited to: (a) replacement of item(s) without prior approval, (b) more than ten (10) business day delay in delivery, (c) over 10% price increase on substituted or discontinued item(s), (d) added delivery or fuel cost to member invoice, or (e) failure to deliver items ordered. The penalties may include (but not limited to): (i) vendor pays the difference directly to the member if the member is required to obtain item(s) from another source, (ii) vendor deficiency filed with the cooperative, (iii) termination of award status.

#### 3.2.16. **INDEMNIFICATION**

Applicable credits. (a) Applicable credits refer to those receipts or reduction-of- expenditure type transactions that offset or reduce expense items allocable to the Federal award as direct or indirect costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the non- Federal entity relate to allowable costs, they must be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

### 3.3. **STANDARD PURCHASE CONDITIONS**

#### 3.3.1. **MERCHANDISE**

Merchandise received shall be new merchandise, not used, or shop-worn merchandise. Merchandise received in this condition will be returned, freight collect at the vendor's expense. If this problem is not corrected within ten (10) working days of notification, then the ESC and each participating member under the Uniform Commercial Code will have the right to exercise their right to remedy.

#### 3.3.2. **GUARANTEE**

A minimum of ninety (90) days guarantee or standard commercial warranty, whichever is greater, shall be provided on all materials. In the event of failure, the vendor agrees to repair or replace such units at no cost to the Cooperative or member, within ten (10) working days.

#### 3.3.3. **USE OF SPECIAL TOOLS**

If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by the Vendor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the Buyer, and to the extent feasible shall be identified by the Vendor as such.

#### 3.3.4. **ABORTION PROVIDER AND AFFILIATE TRANSCATIONS PROHIBITED**

Respondent represents and warrants that the contract is not a taxpayer resource transaction prohibited by Section 2272.003 of the Texas Government Code and that payments made by member to Respondent and Respondent's receipt of appropriated funds under the contract are not prohibited by Article IX, Section 6.24 of the General Appropriations Act.

#### 3.3.5. **COOPERATIVE'S RIGHT TO AUDIT**

Respondent will make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Respondent pertaining to the contract for purposes of inspecting, monitoring, auditing, or evaluating by Cooperative and the State of Texas.

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. The contract may be amended unilaterally by Cooperative to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.

#### 3.3.6. **AMERICANS WITH DISABILITIES ACT**

Respondent represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA) and its implementing regulations, as each may be amended.

#### 3.3.7. **ASSIGNMENTS (FOR GOODS)**

Respondent shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from the Cooperative. Any attempted assignment in violation of this Section is void and without effect.

### 3.3.8. **BINDING EFFECT**

The contract shall inure to the benefit of, be binding upon, and be enforceable against, each party and their respective permitted successors, assigns, transferees, and delegates.

### 3.3.9. **CHANGE IN LAW AND COMPLIANCE WITH LAWS**

Any alterations, additions, or deletions to the terms of the contract that are required by changes in federal or state law or regulations are automatically incorporated into the contract without written amendment hereto, and shall become effective on the date designated by such law or by regulation.

### 3.3.10. **CRITICAL INFRASTRUCTURE SUBCONTRACTS**

For purposes of this Paragraph, the designated countries are China, Iran, North Korea, Russia, and any countries lawfully designated by the Governor as a threat to critical infrastructure. Pursuant to Section 113.002 of the Business and Commercial Code, Respondent shall not enter into a subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business and Commerce Code, in this state, other than access specifically allowed for product warranty and support purposes to any subcontractor unless (i) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is majority owned or controlled by citizens or governmental entities of a designated country; and (ii) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is headquartered in a designated country. Respondent will notify the Cooperative before entering into any subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business & Commerce Code, in this state.

### 3.3.11. **DAMAGE TO GOVERNMENT PROPERTY**

Respondent shall be liable for all damage to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the contract. Respondent shall notify the member in writing of any such damage within one (1) calendar day. Respondent is responsible for the removal of all debris resulting from work performed under the contract.

### 3.3.12. **DISCLOSURE OF INTEREST PARTIES**

Respondent represents and warrants that if selected for award of a contract as a result of the Solicitation, Respondent will submit to Cooperative a Certificate of Interested Parties prior to contract execution in accordance with Section 2252.908 of the Texas Government Code. See CERTIFICATE OF INTERESTED PARTIES FORM 1295

### 3.3.13. **DISCOUNTS**

If Respondent at any time during the term of the contract provides a discount on the final contract costs, Respondent will notify member in writing ten (10) calendar days prior to effective date of discount. Member will generate a Purchase Order Change Notice and send a revised Purchase Order to Respondent.

### 3.3.14. **DRUG-FREE WORKPLACE**

Respondent represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. § 701 et seq.) and maintain a drug-free work environment.

### 3.3.15. **ELECTRICAL ITEMS**

All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).

### 3.3.16. **ESBD**

Notices pertaining to this RFP shall be posted on the Texas Comptroller of Public Accounts Electronic State Business Daily Search ESBD.

### 3.3.17. **FEDERAL OCCUPATIONAL SAFETY AND HEALTH LAW**

Respondent represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15). Vendor warrants that the product sold to Buyer shall conform to the standards promulgated by the U. S. Department of Labor under the Occupational Safety and Health Act. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Vendor's expense. In the event Vendor fails to make the appropriate correction within a reasonable time (15 working days) correction made by the Buyer will be at the Vendor's expense.

### 3.3.18. **FORCE MAJEURE**

No party shall be liable to the other for any delay in, or failure of performance, of any requirement included in the contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God,

war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. UCC § 2-615

**3.3.19. CERTIFICATION CONCERNING HURRICANE RELIEF**

Sections §2155.006 and §2261.053, Government Code, prohibit state agencies from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004 Gov't code, occurring after September 24, 2005. Under §2155.006, Gov't Code, the Respondent certifies that the individual or business entity named in its Proposal is no ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certifications inaccurate.

**3.3.20. IMMIGRATION**

Vendor represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 USC 1101 et seq.) and all subsequent immigration laws and amendments. Immigration and Nationality Act 8 USC §1101

**3.3.21. INDEPENDENT CONTRACTOR**

Respondent acknowledges and agrees that it is furnishing products and services in the capacity of an independent contractor and that Respondent and its personnel are not employees of the Cooperative or the State of Texas.

**3.3.22. LEGAL AND REGULATORY ACTIONS**

Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Respondent or any of the individuals or entities included in the Response within the five (5) calendar years immediately preceding the submission of the Response that would or could impair Respondent's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Cooperative's consideration of the Response. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings, or investigations, etc. that would or could impair Respondent's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Cooperative's consideration of the Response. In addition, Respondent represents and warrants that it shall notify Cooperative in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update Cooperative shall constitute breach of contract and may result in immediate termination of the contract.

**3.3.23. LICENSE GRANT**

Respondent hereby grants to member a non-exclusive, perpetual, irrevocable, worldwide, transferable, fully paid, royalty-free, right and license: (a) to reproduce, modify, distribute, store, publicly perform, publicly display, create derivative works of, and otherwise exploit the deliverables, in each case without any restrictions and without accounting to Respondent; and (b) to sublicense any or all such rights to third parties.

**3.3.24. LIMITATIONS ON AUTHORITY**

Respondent shall have no authority to act for or on behalf of member or the State of Texas except as expressly provided for in the contract; no other authority, power or use is granted or implied. Respondent may not incur any debt, obligation, expense or liability of any kind on behalf of member or the State of Texas.

**3.3.25. MEDIA RELEASES**

Vendor shall not use members' or Cooperative's name, logo, or other likeness in any press release, marketing material, or other announcement without the member's prior expressed approval. Cooperative does not endorse any vendor, commodity, or service. Vendor is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the response or the services to which they relate without Cooperative's prior expressed consent, and then only in accordance with expressed instructions from member.

**3.3.26. NO IMPLIED WAIVER**

The failure of a party to insist at any time upon the strict performance of any contract or agreement or to exercise any option, right, power, or remedy contained in the contract shall not be construed as a waiver or a relinquishment thereof for the future.

**3.3.27. NO QUANTITY GUARANTEES**

Cooperative makes no express or implied warranty whatsoever that any minimum compensation or minimum quantity will be guaranteed under the contract.



**3.3.28. NO THIRD-PARTY BENEFICIARIES**

The contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise.

**3.3.29. PERMITS CERTIFICATIONS AND LICENSES**

Vendor represents and warrants that it has determined what licenses, certifications and permits are required under the contract and has acquired all applicable licenses, certifications, and permits.

**3.3.30. PROMPT PAYMENT**

Payment shall be made in accordance with Chapter 2251 of the TGC, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the TGC shall govern remittance of payment and remedies for late payment and non-payment.

**3.3.31. PROPERTY RIGHTS**

For purposes of the contract, the term "Work" is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code, documentation methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services provided under the contract. Member and Respondent intend this agreement to be a contract for the services and each considers the Work and any and all documentation or other products and results of the services to be rendered by Respondent to be a work made for hire. Respondent and Respondent's employees will have no rights in or ownership of the Work and any and all documentation or other products and results of the services or any other property of Member. Respondent acknowledges and agrees that the Work (and all rights therein) belongs to and shall be the sole and exclusive property of Member. If for any reason the Work would not be considered a work-for-hire under applicable law, Respondent does hereby sell, assign, and transfer to Member, its successors and assigns, the entire right, title and interest in and to the copyright in the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. Respondent agrees to execute all papers and to perform such other property rights, as Member may deem necessary to secure for Member or its designee the rights herein assigned. In the event that Respondent has any rights in and to the Work that cannot be assigned to Member, Respondent hereby grants to Member an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses. No later than the first calendar day after the termination or expiration of the contract or upon Member's request, Respondent shall deliver to Member all completed, or partially completed, Work and any and all documentation or other products and results of the services. Failure to timely deliver such Work or any and all documentation or other products and results of the services will be considered a material breach of the contract. Respondent will not make or retain any copies of the Work or any and all documentation or other products and results of the services without the prior written consent of Member.

**3.3.32. RECORDS RETENTION**

Respondent shall maintain and retain all records relating to the performance of the contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by Respondent for a period of seven (7) years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.

**3.3.33. REFUND**

Vendor shall promptly refund or credit within thirty (30) calendar days any funds erroneously paid by member which are not expressly authorized under the contract.

**3.3.34. RESTRICTED EMPLOYMENT FOR CERTAIN STATE PERSONNEL**

Pursuant to Section 572.069 of the Texas Government Code, Respondent certifies that it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for Agency involving Respondent within two (2) years after the date that the contract is signed or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.

**3.3.35. SECURE ERASURE OF HARD DISK CAPABILITY**

All equipment provided to member by vendor that is equipped with hard disk drives (i.e., computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment's useful life or the end of the related services agreement for such equipment. TAC§ 202.

### 3.3.36. SEVERABILITY

If any provision of the contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.

### 3.3.37. SOVEREIGN IMMUNITY

The Parties expressly agree that no provision of the contract is in any way intended to constitute a waiver by the member or the State of Texas of any immunities from suit or from liability that the member or the State of Texas may have by operation of law.

### 3.3.38. SUBCONTRACTORS

Vendor may not subcontract any or all the work and/or obligations due under the contract without prior written approval of Cooperative. Subcontracts, if any, entered by the vendor shall be in writing and be subject to the requirements of the contract. Should vendor subcontract any of the services required in the contract, vendor expressly understands and acknowledges that in entering such subcontract(s), Cooperative is in no manner liable to any subcontractor(s) of vendor. In no event shall this provision relieve vendor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract.

### 3.3.39. SURVIVAL

Expiration or termination of the contract for any reason does not release Respondent from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

### 3.3.40. TAXES

Purchases made by members are exempt from the State Sales Tax and Federal Excise Tax. Member will furnish Tax Exemption Certificates to vendor prior to purchase as requested by vendor. Vendor represents and warrants that it shall pay all taxes or similar amounts resulting from the contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of vendor or its employees. Member shall not be liable for any taxes resulting from the contract.

### 3.3.41. TRADEMARK LICENSE

Cooperative hereby grants to Respondent, for the term of the contract, a limited non-exclusive, royalty-free, non-assignable, non-transferable license to reproduce Cooperative's trademarks (as depicted in Exhibit \_\_) on published materials in the United States related to the performance of the contract, provided that such license is expressly conditional upon, and subject to, the following:

(1) Respondent is in compliance with all provisions of the contract; (2) Respondent's use of the trademarks is strictly in accordance with the quality standards and in conformance with the reproduction requirements set forth in Exhibit \_\_ or as otherwise communicated by Agency; (3) Respondent takes no action to damage the goodwill associated with the trademarks, and refrains from any attempt to contest, attack, dispute, challenge, cancel and/or oppose Agency's right, title and interest in the trademarks or their validity; (4) Respondent makes no attempt to sublicense any rights under this trademark license; and (5) Respondent complies with any marking requests Agency may make in relation to the trademarks, including without limitation to use the phrase "Registered Trademark", the symbol "™", the registered trademark symbol "®" and/or any equivalent thereof.

### 3.3.42. TRADEMARK OWNERSHIP

Respondent hereby acknowledges and agrees that the trademarks remain the exclusive property of Cooperative, that all right, title and interest in and to the trademarks is exclusively held by Cooperative, and all goodwill associated with such trademarks inures solely to Cooperative.

### 3.3.43. UNFAIR BUSINESS PRACTICES

Vendor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that vendor has not been found to be liable for such practices in such proceedings. Vendor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

### 3.3.44. USE OF STATE PROPERTY

Respondent is prohibited from using State Property for any purpose other than performing Services authorized under the contract. State Property includes, but is not limited to, member's office space, identification badges, member information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any member issued software, and the member Virtual Private Network (VPN client)), and any other resources of member. Respondent shall not remove State Property from the

continental United States. In addition, Respondent may not use any computing device to access member's network or e-mail while outside of the continental United States. Respondent shall not perform any maintenance services on State Property unless the contract expressly authorizes such services. During the time that State Property is in the possession of Respondent, Respondent shall be responsible for (i) all repair and replacement charges incurred by member that are associated with loss of State Property or damage beyond normal wear and tear and (ii) all charges attributable to Respondent's use of State Property that exceeds the contract scope. Respondent shall fully reimburse such charges to member within ten (10) calendar days of Respondent's receipt of member's notice of amount due. Use of State Property for a purpose not authorized by contract shall constitute breach of contract and may result in termination of the contract and the pursuit of other remedies available to member under contract, at law, or in equity.

#### 3.3.45. **WARRANTIES**

The below warranties must be guaranteed by the vendor and shall not override any state or federal regulations or statutes. In the event of conflicting compliance, the UCC shall prevail.

- The price to be paid by the Buyer shall be that contained in the response which vendor warrants to be no higher than vendor's current prices on orders for products of the kind and specification covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event the vendor breaches this warranty, the prices of the items shall be reduced to the vendor's current prices on orders by others, or in the alternative, buyer may cancel any contract without liability to vendor for breach or vendor's actual expense.
- The vendor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this warranty the Buyer shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full such commission percentage, brokerage or contingent fee.
- Vendor shall not limit or exclude any implied warranties and attempt to do so shall render this contract voidable at the option of the Buyer. Vendor warrants that the goods furnished will conform to the specifications, drawings, and descriptions listed in the bid invitation, and to the sample(s) furnished by Vendor, if any. In the event of a conflict between the specifications, drawings, and descriptions, the specification shall govern.
- As part of this contract for sale Vendor agrees to ascertain whether goods manufactured in accordance with the specifications attached to this agreement will give rise to the rightful claim of any third person by way of infringement or the like. Buyer makes no warranty that the production of goods according to the specification will not give rise to such a claim, and in no way shall Buyer be liable to Vendor for indemnification in the event that Vendor is sued on the grounds of infringement or the like. If Vendor is of the opinion that an infringement or the like will result, he will notify Buyer to this effect in writing within fourteen (14) days after the signing of this agreement. If Buyer does not receive notice and subsequently held liable for the infringement or the like, Vendor will save Buyer harmless. If Vendor in good faith ascertains that production of the goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void except that Buyer will pay Vendor the reasonable cost of his search as to infringements.

#### 3.3.46. **CORRECTIVE ACTIONS**

In the event the Cooperative bid documentation is found to be out of compliance with local, state, and/or federal guidelines that are required to be fulfilled by the Cooperative, the Cooperative will oversee a corrective action plan within 30 days of any audit findings. 2 CFR §200 Subpart F

#### 4. Attachments

##### 4.1. FEDERAL COMPLIANCE

Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

Respondent must agree to all compliance statements below. Failure to comply with any agreement shall deem response null and void. Cooperative will adhere to the Region 7 Local Policy when the respondent is found to be out of compliance any time during the duration of any resulting award from this response. In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

##### **EQUAL EMPLOYMENT OPPORTUNITY**

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

##### **DAVIS BACON ACT**

As amended (40 USC 3141–3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 USC 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti- Kickback” Act (40 USC 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

##### **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

(40 USC 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 USC 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 USC 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

##### **RIGHTS TO INVENTION**

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

##### **CLEAN AIR ACT**

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

### **BYRD ANTI-LOBBYING AMENDMENT**

(31 USC 1352)—Contractors that apply or bid with CFR 202 for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

### **RECOVERED MATERIALS**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the **Solid Waste Disposal Act**, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the guidelines. 2 CFR § 200.323; 40 CFR §247

### **TERMINATION FOR CONVENIENCE**

The Cooperative may terminate performance of work under this contract in whole or, from time to time, in part if the Cooperative determines that a termination is in the member's best interest. The Cooperative may terminate any resulting contract for convenience by providing (1) a statement that the contract is being terminated for the convenience of the member, (2) the effective date of termination, (3) the extent of termination, (4) any special instructions, and (5) the steps the contractor is to take to minimize the impact on personnel. Upon any notification of termination for convenience, the contractor is to (1) stop work immediately on the terminated portion of the contract, (2) terminate all subcontracts related to the terminated portion of the prime contract, (3) advise the Cooperative of any special circumstances precluding stoppage of work, (4) perform the continued portion of the contract if the termination is partial, (5) take any action necessary to protect property in the contractor's possession in which the member has an interest, (6) notify the member of any legal proceedings growing out of any subcontract, (7) settle any subcontractor claims arising out of the termination, and (8) dispose of termination inventory as directed by the Agency. FAR 52.249-5

### **TERMINATION FOR CAUSE/ DEFAULT**

If respondent is found to be in default under any provision of this contract, the Cooperative may cancel the contract without notice and either re-solicit or award the contract to the next best responsive and responsible respondent. In the event of abandonment or default, contractor will be responsible for paying damages to the Cooperative and members including, but not limited to, re-procurement costs, and any consequential damages to the Cooperative and members resulting from contractor's non-performance. The defaulting contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly changed. The Cooperative expressly does not waive any rights, remedies, privileges or immunities available to it as an agency of the State of Texas or otherwise available to it under the referenced contract and under applicable law among other things, the Cooperative reserves the right to refer this matter to the Office of the Attorney General of the State of Texas for handling. TGC 552.374

### **TERMINATION FOR NON-APPROPRIATIONS**

The award contract is subject to the appropriation of funds each fiscal year by member. Cooperative cannot guarantee purchases obligated with federal awards.

### **RIGHT TO AUDIT**

Respondent will make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Respondent pertaining to the contract for purposes of inspecting, monitoring, auditing, or evaluating by member and the State of Texas. 2 CFR §200.334

### **SMALL BUSINESS**

Cooperative requests that small and minority owned businesses, women's business enterprises, and labor surplus area firms submit their documentation at time of response. This is basically accomplished through the use of the Texas Certified Historically Underutilized Business (HUB) list.

Additional efforts shall include, but shall not be limited to: a. Including such firms, when qualified, on solicitation mailing lists; b. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources; c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms; d. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms; e. Encourage contracting with consortiums of small businesses, minority-

owned firms, and women’s business enterprises when a contract is too large for one of these firms to handle individually; f. Supplementing the HUB list by using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce. 2 CFR §200.321

**PROHIBITION OF CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

In accordance with Public Law 115-232,889(f)(1) The ESC is prohibited from using federal funds to procure, obtain or enter contracts for certain telecommunication and video surveillance services or equipment. Vendor certifies that it does not use any covered telecommunication equipment or services per FAR 52.204-25. If it is discovered the Vendor does use prohibited equipment, the Vendor must follow the reporting requirements. The ESC reserves the right to terminate any contract any contract in whole or, from time to time, in part if the ESC determines that a termination is in the ESC’s best interest. 2 CFR § 200.216

Respondent must track member purchases with an internal automated tracking system and make available to Cooperative when expressly requested. Respondent will make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Respondent pertaining to the contract for purposes of inspecting, monitoring, auditing, or evaluating by Cooperative or Members for a minimum of seven (7) years. 2 CFR § 200.328

**4.2. FEDERAL COMPLIANCE SIGNATURE**

Respondent must comply with provisions of Appendix II Part 200. CFR § 200.327 Vendor agrees to comply with all federal, state, and local laws, rules, regulations, and ordinances, as applicable and supplied herein this bid document.

Vendor Company Name	Unique Entity ID (SAM) # (if available)
Authorized Person - Printed Name	Authorized Person - Signature
Authorized Person - Title	Date
Company Address: Street, City, State, Zip	
Phone #	Fax #
Authorized Person - Email Address	Corporate/Company Website

#### 4.3. STATE COMPLIANCE

##### **FINGERPRINTING**

A contractor that provides services to a member must be fingerprinted before beginning work, if the contractor 1) will have continuing duties related to the contracted services, and 2) will have the opportunity for direct contact with students. Additionally, the contractor certifies to a member that it has received all criminal history information for its employees who provide services for the school. Pursuant to §22.08341(c), the requirement does not apply to a contractor that performs construction, alteration, or repair of an instructional facility if the contractor uses separate sanitary facilities, installs a barrier fence, and has a policy that employees may not interact with students or enter areas used by students. The vendor shall comply with fingerprinting requirements in accordance with appropriate statutes in the state in which the work is being performed unless otherwise exempted. Vendor shall comply with governing board policy of the member in which work is being performed. TEC §22.0834 TGC §411.097

##### **ANTITRUST AFFIRMATION**

Respondent represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Response to any competitor or any other person engaged in the same line of business as Respondent.

##### **BUY TEXAS**

Respondent agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state. Preferences must be explicitly claimed by respondent and may not be applicable in procurements and/or contracts involving federal funds unless the procurement and/or contract involves unprocessed locally grown or locally raised agricultural products.

##### **CHILD SUPPORT OBLIGATION AFFIRMATION**

Under Section 231.006 of the Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

##### **COMPUTER EQUIPMENT RECYCLING PROGRAM**

Vendor certifies its compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328. TX Health Safety CODE § 361.965(c) 1 TAC §217.10 30 TAC §§328.131-155

##### **CONTRACTING INFORMATION RESPONSIBILITIES**

Respondent agrees to (1) preserve all contracting information related to this contract as provided by the records retention requirements applicable to Cooperative for the duration of the contract plus one (1) calendar year, (2) promptly provide to Cooperative any contracting information related to the contract that is in the custody or possession of the Respondent at the request of Cooperative, and (3) on termination or expiration of the contract, either provide at no cost to Cooperative all contracting information related to the contract that is in the custody or possession of the Respondent or preserve the contracting information related to the contract as provided by the records retention requirements applicable to Cooperative. Except as provided by Section 552.374(c) of the TGC, the requirements of Subchapter J, Chapter 552, TGC, may apply to the contract and the Respondent agrees that the contract can be terminated if the Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

##### **COVID-19 VACCINE PASSPORT PROHIBITION**

Under Section 161.0085 of the Texas Health and Safety Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract.

##### **CRITICAL INFRASTRUCTURE AFFIRMATION**

Pursuant to Government Code Section 2274.0102, Respondent certifies that neither it nor its parent company, nor any affiliate of Respondent or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2274.0103, or (2) headquartered in any of those countries.

##### **DEALING WITH PUBLIC SERVANTS AFFIRMATION**

Respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response. "Public servant" means an officer, employee, or agent of government. Complete definition found in Texas Penal Code §1.07 (a) 41 .TGC §§ 572.051, 2155.003; 34 TAC § 20.157; 2 CFR § 200.318(c)(1)

**DEBTS AND DELINQUENCIES AFFIRMATION**

Respondent agrees that any payments due under the contract shall be applied towards any debt or delinquency that is owed to the State of Texas. TGC § 2252.903

**DISASTER RECOVERY PLAN**

Upon request of Cooperative, Respondent shall provide the descriptions of its business continuity and disaster recovery plans. 13 TAC § 6.94(a)(9)

**DISCLOSURE OF PRIOR EMPLOYMENT**

In accordance with Section 2254.033 of the TGC, relating to consulting services, Respondent certifies that it does not employ an individual who has been employed by Region 7 or another agency at any time during the two years preceding the submission of the Response or, in the alternative, Respondent has disclosed in its Response the following: (i) the nature of the previous employment with Region 7 or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination. TGC §2254.033

**DISPUTE RESOLUTION**

Disputes arising under the contract shall be resolved in accordance with the dispute resolution process provided in Chapter 2260 of the Texas Government Code.

**ENERGY COMPANY BOYCOTTS**

Respondent represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Respondent shall promptly notify Cooperative.

**ENTITIES THAT BOYCOTT ISRAEL**

Pursuant to Section 2271.002 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criterion under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Respondent shall state any facts that make it exempt from the boycott certification in its response.

**E-VERIFY PROGRAM**

Respondent certifies that for contracts for services, Respondent shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of: 1. all persons employed by Respondent to perform duties within Texas; and 2. all persons, including subcontractors, assigned by Respondent to perform work pursuant the contract within the United States of America. The Contractor shall provide, upon request of the Cooperative, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed. If it is determined that Respondent has violated the certifications set forth in this Section, then (1) Respondent shall be in breach of contract, (2) Cooperative shall have the option to terminate the contract for cause without prior notice, and (3) in addition to any other rights or remedies available to Cooperative under the contract, Respondent shall be responsible for all costs incurred by Cooperative to obtain substitute services to replace the terminated contract. Executive Order RP-80: Federal E-Verify System

**EXCESS OBLIGATIONS PROHIBITED**

Any contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature.

**EXCLUDED PARTIES**

Respondent certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.

**FALSE STATEMENTS**

Respondent represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Response and any resulting contract. TGC § 2155.077(a)(2)

**FINANCIAL PARTICIPATION PROHIBITED AFFIRMATION**

Under Section 2155.004(b) of the Texas Government Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.



**FIREARM ENTITIES AND TRADE ASSOCIATION DISCRIMINATION**

If Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Respondent verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. If Respondent does not make that verification, Respondent must so indicate in its Response and state why the verification is not required.

**FOREIGN TERRORIST ORGANIZATIONS**

Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

**GOVERNING LAW AND VENUE**

The contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Gregg County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting ESC.

**HUMAN TRAFFICKING PROHIBITION**

Under Section 2155.0061 of the TGC, the Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. TGC § 2155.0061

**INDEMNIFICATION**

Respondent shall defend, indemnify, and hold harmless Region 7, Cooperative, and members and/or their officers, agents, employees, Board of Directors from any and all claims, violations, misappropriations or infringement of any patent, trademark, copyright, trade secret or other intellectual property rights and/or other intangible property, publicity or privacy rights, and/or in connection with or arising from: (1) the performance or actions of respondent pursuant to this contract (2) any deliverable, work product, configured service or other service provided hereunder; and/or (3) member and/or respondent's use of or acquisition of any requested services or other items provided to the member by respondent or otherwise to which member has access as a result of respondent's performance under the contract. Respondent and member agree to furnish a timely expressly written notice to each other of any such claim. Respondent shall be liable to pay all costs of defense, including attorney's fees. The defense shall be coordinated by respondent with the Office of the Texas Attorney General (OAG) when Texas State Agencies are named defendants in any lawsuit and respondent may not agree to any settlement without first obtaining the concurrence from OAG. In addition, respondent will reimburse member for any claims, damages, costs, expenses, or other amounts, including but not limited to, attorney's fees and court costs, arising from any such claim. If Cooperative determines that a conflict exist between its interest and those of respondent or if Cooperative is required by applicable law to select separate counsel, Cooperative will be permitted to select separate counsel and respondent will pay all reasonable costs of Cooperative's counsel.

**NO CONFLICTS OF INTEREST**

Respondent represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety. Award contracts valued above \$1 million (\$1,000,000.00) or require member Board approval, a Certificate of Interested Parties must be completed through the Texas Ethics Commission. The Cooperative will not be responsible for members' obligation to comply with this standard. The Cooperative has no formal tracking options of contracts once award is released. 2 CFR 200.319(b)(5) TGC § 2252.908, 2254.032, 2261.252(b)

**PRIOR DISASTER RELIEF CONTRACT VIOLATION**

Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

**PUBLIC INFORMATION ACT**

Respondent understands that Cooperative will comply with the Texas Public Information Act (TX PIA), TGC, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. All proposals, forms, documentation, or other materials submitted by vendor to Cooperative in response to the bid are subject to the TX PIA unless vendor explicitly identifies confidential, copyright and/or proprietary exceptions in vendor response. Vendor will notify Cooperative within twenty-four (24) hours of receipt of any third party requests for information that was provided by the State of Texas for use in performing the Contract. This Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Vendor agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Vendor is required to make any information

created or exchanged with the Cooperative pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state.

**SUSPENSION AND DEBARMENT**

Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

**TERMS AND CONDITIONS ATTACHED TO RESPONSE**

Any terms and conditions attached to a Response will not be considered unless specifically referred to in the Response.

**RESIDENCY**

**a. TEXAS BIDDER AFFIRMATION**

Respondent certifies that if a Texas address is shown as the address of the Respondent on this Response, Respondent qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.

I certify that my company is a "Texas Bidder"

**b. NON-RESIDENT BIDDER**

If you qualify as a "nonresident bidder" you must furnish the following:

I certify that my company qualifies as a "Nonresident Bidder". Resident state: \_\_\_\_\_

How many people do you employ in the State of Texas? \_\_\_\_\_

Does your "residence state" require bidders whose principal place of business is in Texas to underbid bidders whose residence state is the same as yours by a prescribed amount or percentage to receive a comparable contract? "Residence state" means the state in which the principal place of business is located.

Yes (What is the amount or percentage? \_\_\_\_\_%)  No

**FELONY**

State of Texas Legislative Senate Bill No. 1, Section 44.034, Notification of Criminal History, Subsection (a), states that "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony. Subsection (b) states "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before termination of the contract. This notice is not required of a publicly-held corporation.

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

My firm is not owned or operated by anyone who has been convicted of a felony.

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

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

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

**4.4.STATE OF TEXAS COMPLIANCE SIGNATURE**

**SIGNATURE AUTHORITY**

The undersigned certifies that I am duly authorized to submit this Response and execute a contract on my own behalf or on behalf of the Respondent listed below.

\_\_\_\_\_  
Company

\_\_\_\_\_  
Authorized Person Signature

\_\_\_\_\_  
Authorized Person Printed

\_\_\_\_\_  
Date Signed

#### 4.5. ADDITIONAL RESPONSE DOCUMENTATION

The below terms are requested, but are optional, to be submitted with vendor response. Failure to submit the below information will not be grounds to deem a vendor's response null and void.

##### 4.5.1. REQUEST FOR TAXPAYER IDENTIFICATION NUMBER

Request for Taxpayer Identification number Form W-9 must be completed by accessing the IRS website:

<https://www.irs.gov/forms-pubs/about-form-w-9>. The form must be printed, signed, and submitted with vendor proposal.

##### 4.5.2. CONFLICT OF INTEREST QUESTIONNAIRE

Conflict of Interest Questionnaire Form CIQ must be completed by accessing the TEC website:

<https://www.ethics.state.tx.us/forms/conflict/>. The form must be printed, signed, and submitted with vendor proposal.

##### 4.5.3. CERTIFICATE OF INTERESTED PARTIES FORM 1295

Certificate of Interested Parties Form 1295 may be completed by accessing the TEC website:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm). The form must be printed, signed, and submitted with vendor proposal.

5. Optional No Bid

**RETURN ONLY IF YOU DO NOT TO SUBMIT A RESPONSE TO THIS SOLICITATION.**

You may email only this page to: [purchasing@esc7.net](mailto:purchasing@esc7.net)

RFP# CM2223

Whereas on the \_\_\_\_\_ day of \_\_\_\_\_, 2022, our company has reviewed CM2223 offered by Region 7 Purchasing Cooperative and our company elects not to submit a response based on the following determination.

\_\_\_\_\_ Company does not supply the requested commodity product/service.

\_\_\_\_\_ The quantities requested or scope of job is too small to be supplied by my company.

\_\_\_\_\_ The quantities requested or scope of job is too large to be supplied by my company.

\_\_\_\_\_ Other:

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

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

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Authorized Person - Signature

\_\_\_\_\_  
Date Signed

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

\_\_\_\_\_  
Email Address

6. Check-Off  
No return required.

\_\_\_\_\_ Completed and signed State Compliance.

\_\_\_\_\_ Completed and signed Federal Compliance.

\_\_\_\_\_ Attached Price list or catalog on Step 5.

\_\_\_\_\_ Attachments with signatures are attached on Step 5.

\_\_\_\_\_ Completed submission through Step 6 online.