

# TIPS VENDOR AGREEMENT

(JOC) PART 2 ONLY

Between

MIDDLETON INC

and

(Company Name)

**THE INTERLOCAL PURCHASING SYSTEM (TIPS),**

a Department of Texas Education Service Center Region 8 for  
**TIPS RCSP 220106 Comprehensive HVAC (2 Part with JOC) - PART 2 ONLY**

## General Information

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

The Vendor Agreement shall include and incorporate by reference this Agreement, the terms and conditions, special terms and conditions, any agreed upon amendments, as well as all of the sections of the solicitation as posted, including any addenda and the awarded vendor's proposal. Once signed, if an awarded vendor's proposal varies or is unclear in any way from the TIPS Agreement, TIPS, at its sole discretion, will decide which provision will prevail. Other documents to be included are the awarded vendor's proposals, task orders, purchase orders and any adjustments which have been issued. If deviations are submitted to TIPS by the proposing vendor as provided by and within the solicitation process, this Agreement may be amended to incorporate any agreed deviations.

The following pages will constitute the Agreement between the successful vendors(s) and TIPS. Bidders shall state, in a separate writing, and include with their proposal response, any required exceptions or deviations from these terms, conditions, and specifications. If agreed to by TIPS, they will be incorporated into the final Agreement.

A Purchase Order, Agreement or Contract is the TIPS Member's approval providing the authority to proceed with the negotiated delivery order under the Agreement. Special terms and conditions as agreed to between the vendor and TIPS Member should be added as addenda to the Purchase Order, Agreement or Contract. Items such as certificate of insurance, bonding requirements, small or disadvantaged business goals are some of the addenda possible.

## **Terms and Conditions**

### **Conflicts with RS Means Unit Price Book**

If the terms of the solicitation referenced RS Means Unit Price Book occur, the RS Means Book shall control if it determines the legality of the solicitation award as it relates to the requisite Means Unit Price Book.

### **Freight**

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

### **Warranty Conditions**

All new supplies equipment and services shall include manufacturer's minimum standard warranty unless otherwise agreed to in writing. Vendor shall be legally permitted to sell, or an authorized dealer, distributor or manufacturer for all products offered for sale to TIPS Members. All equipment proposed shall be new unless clearly stated in writing.

### **Customer Support**

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

### **Agreements**

Agreements for purchase will normally be put into effect by means of a purchase order(s) executed by authorized agents of the TIPS Member participating government entities, but other means of placing an order may be used at the Member's discretion. Vendor accepts and understands that when a purchase order or similar purchase document is sent from a customer through TIPS to the Vendor, TIPS is recording the purchase and verifying whether the purchase is within the parameters of the TIPS Contract only. Vendor agrees that TIPS is not a legal party to the purchase order or similar purchase document and TIPS is not responsible for identifying fraud, mistakes, or misrepresentations for the specific order. Vendor agrees that any purchase order or similar purchase document issued from a customer to Vendor, even when processed through TIPS, constitutes a legal contract between the customer and Vendor only. A Vendor that accepts a purchase order or similar purchase document and fulfills an order, even when processed through TIPS, is representing that the vendor has carefully reviewed the purchase order or similar purchase document for legality, authenticity, and accuracy.

### **Davis Bacon Act**

Davis Bacon Act requirements will be met when Federal Funds are used for construction and/or repair of buildings or as otherwise required by applicable statute or regulation.

### **Other Wage Rates**

Other wage rates may be required by some TIPS Members and acceptance of a project by the Vendor may require the Vendor to comply with the TIPS Member's required wage rate.

### **Tax exempt status**

Most TIPS Members are tax exempt and the related laws of the jurisdiction of the TIPS Member shall apply.

### **Assignments of Agreements**

No assignment of Agreement may be made without the prior written approval of TIPS. Payment for delivered goods and services can only be made to the awarded Vendor, Vendor designated reseller or vendor assigned company.

### **Disclosures**

- Vendor and TIPS affirm that he/she, or any authorized employees or agents, has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement.
- Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with the TIPS program.
- The Vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this Agreement.

### **Term of Agreement and Renewals**

The Agreement with TIPS is for approximately two (2) years with an option for renewal extension for an additional two (2) consecutive one (1) year terms. The first renewal extension year shall be automatic unless the awarded vendor notifies TIPS of its objection to the first additional one (1) year renewal extension. If TIPS offers the second one (1) year renewal extension terms, the vendor will be notified by email to the primary contact of the awarded Vendor and shall be deemed accepted by the Vendor unless the awarded vendor notifies TIPS of its objection to the additional term. TIPS may or may not exercise the available extension(s) provided in the original solicitation beyond the base term. Whether or not to offer the renewal extension years is at the sole discretion of TIPS.

**“Start Date” for Term Calculation Purposes Only:** Regardless of actual award/effective date of Contract, for Agreement “term” calculation purposes only, the Agreement “start date” is the last day of the month that Award Notifications are anticipated as published in the Solicitation.

**Example:** *If the anticipated award date published in the Solicitation is August 27, 2020 but extended negotiations delay award until September 24, 2020 the end date of the resulting initial “two-year” term Agreement, (which is subject to an extension(s)) will still be August 31, 2022 in this example*

**“Termination Date”:** The scheduled Agreement “termination date” shall be the last day of the month of the month of the Original Solicitation’s Anticipated Award Date plus two years.

**Example:** *If the original term is approximately two years, and the solicitation provides an anticipated award date of August 27, 2020, the expiration date of the original two-year term shall be August 31, 2022 in this example.*

**Extensions:** Any extensions of the original term shall begin on the next day after the day the original term expires.

**Example Following the Previous Example:** *If TIPS offers a one-year extension, the expiration of the extended term shall be August 31, 2023 in this example.*

TIPS may offer to extend Vendor Agreements to the fullest extent the original Solicitation permits.

Total term of Agreement can be up to the number of years provided in the solicitation or as limited by statute.

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

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

**Shipments**

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

**Invoices**

The awarded Vendor shall submit invoices or payment requests to the TIPS Member participating entity clearly stating "Per TIPS Agreement # xxxxxx." Each invoice or pay request shall include the TIPS Member's purchase order number or other identifying designation as provided in the order or contract by the TIPS Member. If applicable, the shipment tracking number or pertinent information for verification of TIPS Member receipt shall be made available upon request.

**Pricing**

Price increases will be honored according to the terms of the solicitation. However, the Vendor shall honor previous prices for thirty (30) days after written notification to TIPS of an increase, except any price changes related to the, then current, RS Means Unit Price Book is valid. Price of a specific Job Order Contract proposal to a TIPS Member shall not change within 60 days of date of proposal as a result of an updated RS Means Unit Price Book unless agreed by the TIPS Member. All pricing submitted to TIPS shall include the participation fee, as provided in the solicitation, to be remitted to TIPS by the Vendor. Vendor will not show adding the fee to the invoice presented to customer. Failure to render the participation fee to TIPS shall constitute a breach of this agreement and shall be grounds for termination of this agreement and any other agreement held with TIPS.

**Participation Fees and Reporting of Sales to TIPS by Vendor**

The Participation Fee that was published as part of the Solicitation and the fee published is the legally effective fee, along with any fee conditions stated in the Solicitation. Collection of the fees by TIPS is required under Texas Government Code §791.011 Et seq. Fees are due on all TIPS purchases reported by either Vendor or Member. Fees are due to TIPS upon payment by the Member to the Vendor, Reseller or Vendor Assigned Dealer. Vendor, Reseller or Vendor Assigned Dealer agrees that the participation fee is due to TIPS for all Agreement sales immediately upon

receipt of payment including partial payment, from the Member Entity and must be paid to TIPS at least on a monthly basis, specifically within 31 calendar days of receipt of payment, if not more frequently, or as otherwise agreed by TIPS in writing and signed by an authorized signatory of TIPS. Thus, when an awarded Vendor, Reseller or Vendor Assigned Dealer receives any amount of payment, even partial payment, for a TIPS sale, the legally effective fee for that amount is immediately due to TIPS from the Vendor and fees due to TIPS should be paid at least on a monthly basis, specifically within 31 calendar days of receipt of payment, if not more frequently.

### **Reporting of Sales to TIPS by Vendor**

Vendor is required to report all sales under the TIPS contract to TIPS. When a public entity initiates a purchase with a TIPS Awarded Vendor, if the Member inquires verbally or in writing whether the Vendor holds a TIPS Contract, it is the duty of the Vendor to verify whether or not the Member is seeking a TIPS purchase. Once verified, the Vendor must include the TIPS Contract number on any communications and related sales documents exchanged with the TIPS Member entity. To report sales, the Vendor must login to the TIPS Vendor Portal online at [https://www.tips-usa.com/vendors\\_form.cfm](https://www.tips-usa.com/vendors_form.cfm) and click on the PO's and Payments tab. Pages 3-7 of the Vendor Portal User Guide will walk you through the process of reporting sales to TIPS. Please refer to the TIPS Accounting FAQ's for more information about reporting sales and if you have further questions, contact the Accounting Team at [accounting@tips-usa.com](mailto:accounting@tips-usa.com). The Vendor or vendor assigned dealers are responsible for keeping record of all sales that go through the TIPS Agreement and submitting same to TIPS. Failure to render the participation fee to TIPS shall constitute a breach of this agreement with our parent governmental entity, Texas Education Service Center Region 8, as established by the Texas legislature and shall be grounds for termination of this agreement and any other agreement held with TIPS and possible legal action. Any overpayment of participation fees to TIPS by a Vendor will be refunded to the Vendor within ninety (90) days of receipt of notification if TIPS receives written notification of the overpayment not later than the expiration of six (6) months from the date of overpayment and TIPS determines that the amount was not legally due to TIPS pursuant to this agreement and applicable law. It is the Vendor's responsibility to identify which sales are TIPS Agreement sales and pay the correct participation fee due for TIPS Agreement sales. Any notification of overpayment received by TIPS after the expiration of six (6) months from the date of overpayment will be non-refundable. Region 8 ESC and TIPS reserve the right to extend the six (6) month deadline to notify if approved by the Region 8 ESC Board of Directors. TIPS reserves all rights under the law to collect the fees due. Please contact TIPS at [tips@tips-usa.com](mailto:tips@tips-usa.com) or call (866) 839-8477 if you have questions about paying fees.

### **Indemnity**

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

### **State of Texas Franchise Tax**

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

### **Miscellaneous**

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

#### **Purchase Order Pricing/Product Deviation**

If a deviation of pricing/product on a purchase order or contract modification occurs, TIPS is to be notified within five (5) business days of receipt of change order.

#### **Termination for Convenience of TIPS Agreement Only**

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

#### **TIPS Member Purchasing Procedures**

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

- Awarded Vendor delivers goods/services directly to the participating member.
- Awarded Vendor invoices the participating TIPS Member directly.
- Awarded Vendor receives payment directly from the participating member.
- Fees are due to TIPS upon payment by the Member to the Vendor. Vendor agrees to pay the participation fee to TIPS for all Agreement sales upon receipt of payment including partial payment, from the Member Entity or as otherwise agreed by TIPS in writing and signed by an authorized signatory of TIPS.

#### **Form of Agreement and Reporting**

If a vendor submitting an offer requires TIPS and/or TIPS Member to sign an additional agreement, a copy of the proposed agreement must be included with the proposal to the TIPS Member. TIPS does not require a review a TIPS Member's Job Order contract TYPE AIA or other similar Contract provided by the TIPS Member. This clause does not relieve the Vendor from the responsibility to report the contract execution and the amount of the contract and any change orders.

#### **Licenses**

Awarded Vendor shall maintain, in current status, all federal, state and local licenses, bonds and permits required for the operation of the business conducted by awarded Vendor. Awarded Vendor shall remain reasonably fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of goods or services under the Agreement. TIPS and TIPS Members reserves the right to stop work and/or cancel an order or terminate this or any other sales Agreement of any awarded Vendor whose license(s) required for performance under this Agreement have expired, lapsed, are suspended or terminated subject to a 30-day cure period unless

prohibited by applicable statute or regulation.

### **Novation**

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

### **Site Requirements (when applicable to service or job)**

**Cleanup:** Awarded vendor shall clean up and remove all debris and rubbish resulting from their work as required or directed by TIPS Member. Upon completion of work, the premises shall be left in good repair and an orderly, neat, clean and unobstructed condition.

**Preparation:** Awarded vendor shall not begin a project for which TIPS Member has not prepared the site, unless awarded vendor does the preparation work at no cost, or until TIPS Member includes the cost of site preparation in a purchase order. Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.

**Registered sex offender restrictions:** For work to be performed at schools, awarded vendor agrees that no employee of a sub-contractor who has been adjudicated to be a registered sex offender will perform work at any time when students are or reasonably expected to be present. Awarded vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the TIPS Member's discretion. Awarded vendor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge.

**Safety measures:** Awarded vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Awarded vendor shall post warning signs against all hazards created by the operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

### **Smoking**

Persons working under Agreement shall adhere to local smoking policies. Smoking will only be permitted in posted areas or off premises.

### **Marketing**

Awarded vendor agrees to allow TIPS to use their name and logo within website, marketing materials and advertisement subject to any reasonable restrictions provided to TIPS in the Proposal to the Solicitation. Any use of TIPS name and logo or any form of publicity, inclusive of press release, regarding this Agreement by awarded vendor must have prior approval from TIPS.

### **Supplemental agreements**

The TIPS Member entity participating in the TIPS Agreement and awarded vendor may enter into a separate supplemental agreement or contract to further define the level of service requirements over and above the minimum defined in this Agreement i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement or contract developed as a result of this Agreement is exclusively between the participating entity and awarded vendor. TIPS,

its agents, TIPS Members and employees shall not be made party to any claim for breach of such agreement.

#### **Survival Clause**

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

#### **Legal obligations**

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

#### **Audit rights**

Due to transparency statutes and public accountability requirements of TIPS and TIPS Members', the awarded Vendor shall, at their sole expense, maintain appropriate due diligence of all purchases made by TIPS Member that utilizes this Agreement. TIPS and Region 8 ESC each reserve the right to audit the accounting of TIPS related purchases for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective date of termination. In order to ensure and confirm compliance with this agreement, TIPS shall have authority to conduct random audits of Awarded Vendor's pricing that is offered to TIPS Members with 30 days' notice unless the audit is ordered by a Court Order or by a Government Agency with authority to do so without notice. Notwithstanding the foregoing, in the event that TIPS is made aware of any pricing being offered to eligible entities that is materially inconsistent with the pricing under this agreement, TIPS shall have the ability to conduct the audit internally or may engage a third-party auditing firm to investigate any possible non-complying conduct or may terminate the Agreement according to the terms of this Agreement. In the event of an audit, the requested materials shall be reasonably provided in the format and at the location designated by Region 8 ESC or TIPS.

#### **Force Majeure**

If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and fully particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

#### **Choice of Law**

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

#### **Venue, Jurisdiction and Service of Process**

Any Proceeding arising out of or relating to this procurement process or any contract issued by TIPS resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Camp County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives



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

### **Bonding**

When applicable, performance bonds and payment bonds will be required on construction or labor required jobs. Awarded vendor will meet the TIPS Member's local and state purchasing requirements. Awarded vendors may need to provide additional capacity as jobs increase. Bonds costs are passed through at cost to the TIPS Member and are not subject to the TIPS Participation fee be paid to TIPS. The actual cost of the bond will be a pass through to the TIPS Member and added to the purchase order or Contract.

### **Professional Engineering and Architect's Services**

Professional Engineering and Architect's Services are not permitted to be provided under this Agreement. Texas statutes prohibit the procurement of Professional Engineering and Architect's Services through a cooperative agreement.

### **Scope of Services**

The specific scope of work for each job shall be determined in advance and in writing between TIPS Member, Member's design professionals and Vendor. It is permitted for the TIPS Member to provide a general scope description, but the awarded vendor should provide a written scope of work, and if applicable, according to the TIPS Member's design Professional as part of the proposal. Once the scope of the job is agreed to, the TIPS Member will issue a PO and/or an Agreement or Contract with the Job Order Contract Proposal referenced or as an attachment along with bond and any other special provisions agreed by the TIPS Member. If special terms and conditions other than those covered within this solicitation and awarded Agreements are required, they will be attached to the PO and/or an Agreement or Contract and shall take precedence over those in this base TIPS Vendor Agreement.

### **Project Delivery Order Procedures**

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

### **Scheduling of Projects**

Scheduling of projects (if applicable) may be accomplished when the TIPS Member issues a Purchase Order and/or an Agreement or Contract that will serve as "the notice to proceed" as agreed by the Vendor and the TIPS Member. The period for the delivery order will include the mobilization, materials purchase, installation and delivery, design, weather, and site cleanup and inspection. No additional claims may be made for delays as a result of these items. When the tasks have been completed the awarded vendor shall notify the client and have the TIPS Member or a designated representative of the TIPS Member inspect the work for acceptance under the

scope and terms in the Purchase Order and/or Agreement or Contract. The TIPS Member will issue in writing any corrective actions that are required. Upon completion of these items, the TIPS Member will issue a completion notice and final payment will be issued per the contractual requirements of the project with the TIPS Member. Any Construction contract prepared by the TIPS Member's Legal Counsel may alter the terms of this subsection, "**Scheduling of Projects**".

#### **Support Requirements**

If there is a dispute between the awarded vendor and TIPS Member, TIPS or its representatives may assist, at TIPS sole discretion, in conflict resolution or third party (mandatory mediation), if requested by either party. TIPS, or its representatives, reserves the right to inspect any project and audit the awarded vendors TIPS project files, documentation and correspondence.

#### **Status of TIPS Members as Related to This Agreement**

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

#### **Incorporation of Solicitation**

The TIPS Solicitation, whether a Request for Proposals, the Request for Competitive Sealed Proposals or Request for Qualifications solicitation, the Vendor's response to same and all associated documents and forms made part of the solicitation process, including any addenda, that resulted in the execution of this agreement are hereby incorporated by reference into this agreement as if copied verbatim.

#### **SECTION HEADERS OR TITLES**

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

#### **CERTIFICATIONS**

If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. **Pursuant to Chapter 2270 of the Texas Government Code, the Vendor hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Vendor, if any (the "Vendor Companies"), boycotts Israel, and the Vendor agrees that the Vendor and Vendor Companies will not boycott Israel during the term of this Agreement.** For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

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

You certify that pursuant to Texas Business and Commerce Code Chapter 272, as revised September 1, 2017, any construction contract or agreement as defined in the Statute with a TIPS, Education Service Center Region 8 or a Texas TIPS Member subject to the Statute shall include a Choice of Law provision providing that this agreement shall be subject to and interpreted by the Laws of the State of Texas without regard to any conflict of laws principles for any action shall be in a court of competent jurisdiction in Texas and any arbitration shall be in the State of

Texas. Pursuant to the Texas Business and Commerce Code, as amended by the 85<sup>th</sup> Texas Legislature, this Construction Agreement for Job Order Contract services is, in the event of a dispute between the parties, subject to interpretation according to the Laws of the state of Texas only, without regard to any conflict of laws principles. Venue for any alternative dispute resolution procedure or process shall be in the state of Texas. If the dispute is litigated, venue and jurisdiction shall be in a court of competent jurisdiction in the state of Texas.

Pursuant to 85<sup>th</sup> Texas Legislative H.B. 3270, as it applies to Texas Education Code § 22.0834 et seq, the Vendor shall comply with all relevant sections related to student contact, background checks, fingerprinting and other related requirements.

It is the intent of TIPS to award to reliable, high performance vendors to supply products and services to government and educational agencies. It is the experience of TIPS that the following procedures provide TIPS, the Vendor, and the participating agency the necessary support to facilitate a mutually beneficial relationship. The specific procedures will be negotiated with the successful vendor.

- **Agreements:**

All vendor Purchase Orders and/or Agreements/Contracts must be emailed to TIPS at tipspo@tips-usa.com. Should an agency send an order direct to vendor, it is the vendor's responsibility to forward the order to TIPS at the email above within three business days and confirm its receipt with TIPS.

- **Promotion of Agreement:**

It is agreed that Vendor will encourage all eligible entities to purchase from the TIPS Program. Encouraging entities to purchase directly from the Vendor, bypassing the TIPS Agreement when the Member has requested the TIPS agreement is a violation of the terms and conditions of this Agreement and will result in removal of the Vendor from the TIPS Program.

# TIPS Vendor Agreement Signature Form

220106 Comprehensive HVAC (2 Part with JOC) PART 2 ONLY

Company Name Middleton Inc. dba Middleton Heat & Air

Address 22039 Interstate 30

City Bryant State AR Zip 72022

Phone 501-529-1055 Fax 501-847-8379

Email of Authorized Representative cyeoman@middletoninc.com

Name of Authorized Representative Cody Yeoman

Title Sales Manager

Signature of Authorized Representative *Cody J Yeoman*

Date 2/14/2022

TIPS Authorized Representative Name David Fitts

Title Executive Director

TIPS Authorized Representative Signature *David Wayne Fitts*

Approved by ESC Region 8 *David Wayne Fitts*

Date 3-24-2022

## **NOTICE TO MEMBERS REGARDING ATTRIBUTE RESPONSES**

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



## 220106 Addendum 2 Middleton Heat and Air Middleton, Inc Supplier Response

### Event Information

Number: 220106 Addendum 2  
Title: Comprehensive HVAC ( 2 Part with JOC)  
Type: Request for Proposal  
Issue Date: 1/6/2022  
Deadline: 2/18/2022 03:00 PM (CT)  
Notes: This is a 2 PART solicitation. PART 1 is for projects that are not considered construction or a public work. It includes, but is not limited to, parts, supplies, maintenance services and repairs. PART 2 Job Order Contract (JOC) is for projects considered construction or public work projects. The determination of whether or not a project requires a PART 2 JOC is the responsibility of the TIPS member entity. Vendors are encouraged to respond to BOTH PARTS 1 and 2 to meet the needs of our members, but responses to both parts is not required.

**IF YOU CURRENTLY HOLD TIPS CONTRACTS: 180101 COMPREHENSIVE HVAC SOLUTIONS AND SERVICES PART 1 OR 2 ("180101"); 190604 COMPREHENSIVE HVAC SOLUTIONS AND SERVICES PART 1 OR 2 ("190604"), OR; 200303 COMPREHENSIVE HVAC PART 1 OR 2 ("200303"), YOU MUST RESPOND TO THIS SOLICITATION TO PREVENT LAPSE OF CONTRACT UNLESS YOU HOLD ANOTHER CURRENT TIPS**

**CONTRACT THAT COVERS ALL OF YOUR HVAC OFFERINGS.  
THIS AWARDED CONTRACT WILL REPLACE YOUR EXPIRING  
TIPS CONTRACTS 180101, 190604, AND 200303.**

## **Contact Information**

Address: Region 8 Education Service Center  
4845 US Highway 271 North  
Pittsburg, TX 75686  
Phone: +1 (866) 839-8477  
Email: [bids@tips-usa.com](mailto:bids@tips-usa.com)

## Middleton Heat and Air Information

Address: 22039 I-30  
Bryant, AR 72022  
Phone: (501) 224-4888

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

Cody J Yeoman

*Signature*

*Submitted at 2/15/2022 4:38:11 PM*

cyeoman@middletoninc.com

*Email*

## Requested Attachments

### Agreement Signature Form PART 1 ONLY

220106 Agreement Signature Form PART 1 ONLY.pdf

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

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

### Vendor Agreement PART 1 ONLY

220106 Vendor Agreement PART 1 ONLY.pdf

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

DO NOT UPLOAD encrypted or password protected files.

### Vendor Agreement PART 2 ONLY

220106 Vendor Agreement JOC PART 2 ONLY.pdf

If proposing on Part 2, the vendor must download the Vendor Agreement from the attachment tab, fill in the requested information and upload the completed agreement.

DO NOT UPLOAD encrypted or password protected files.

### Agreement Signature Form PART 2 ONLY

220106 Agreement Signature Form PART 2 ONLY.pdf

If proposing on Part 2, the vendor must download the Vendor Agreement from the attachment tab, fill in the requested information and upload the completed agreement.

DO NOT UPLOAD encrypted or password protected files.

### Pricing Form 1 PART 1 ONLY

220106 Pricing Form 1 PART 1 ONLY.xlsx

The vendor must download the PRICING SPREADSHEET SHEET from the attachment tab, fill in the requested information and upload the completed spreadsheet.

DO NOT UPLOAD encrypted or password protected files.

### Pricing Form 2 PART 1 ONLY

220106 Pricing Form 2 PART 1 ONLY.xlsx

The vendor must download the PRICING SPREADSHEET SHEET from the attachment tab, fill in the requested information and upload the completed spreadsheet.

DO NOT UPLOAD encrypted or password protected files.

### OPTIONAL - PART 2 - JOC Pricing of Itemized List of RS Means Non-Prepriced Items

*No response*

The Vendor may download the optional Pricing of Itemized List of RS Means Non-Prepriced Items form from the attachment tab, fill in the requested information, and upload the completed spreadsheet. DO NOT UPLOAD encrypted or password protected files.



Valid Reference Email addresses are REQUIRED on the spreadsheet. The vendor must download the References spreadsheet from the attachment tab, fill in the requested information and upload the completed spreadsheet. DO NOT UPLOAD encrypted or password protected files.

**Proposed Goods and Services**

Brochure outside.jpg

Please upload one or more documents or sheets describing your offerings, line cards, catalogs, links to offerings OR list links to your offerings that illustrate the catalog of proposed lines of goods and or services you carry and offer under this proposal. It does not have to be exhaustive but should, at a minimum tell us what you are offering. It could be as simple as a sheet with your link to your online catalog of goods and services.

**D/M/WBE Certification OPTIONAL**

No response

D/M/WBE Certification documentation may be scanned and uploaded if you desire to claim your status as one of the identified enterprises. (Disadvantaged Business Enterprise, Minority Business Enterprise and/or Woman Business Enterprise) If vendor has more than one certification scan into one document. (PDF Format ONLY)  
DO NOT UPLOAD encrypted or password protected files.

**Warranty**

No response

Warranty information (if applicable) must be scanned and uploaded. (PDF Format ONLY)  
DO NOT UPLOAD encrypted or password protected files.

**Supplementary**

MIDD-09161Commercial Brochure\_In.pdf

Supplementary information can be scanned and uploaded. (Company information, brochures, catalogs, etc.) (PDF Format ONLY)  
DO NOT UPLOAD encrypted or password protected files.

**All Other Certificates**

No response

All Other Certificates (if applicable) must be scanned and uploaded. If vendor has more than one other certification scan into one document. (PDF Format ONLY)  
DO NOT UPLOAD encrypted or password protected files.

**Logo and Other Company Marks**

THE Middleton Logo.jpg

**Conflict of Interest Form CIQ- ONLY REQUIRED IF A CONFLICT EXISTS PER THE INSTRUCTIONS**

No response

ONLY REQUIRED IF A CONFLICT EXISTS PER THE INSTRUCTIONS  
Conflict of Interest Form for Vendors that are required to submit the form. The Conflict of Interest Form is included in the Base documents or can be found at <https://www.tips-usa.com/assets/documents/docs/CIQ.pdf>.

**Certificate of Corporate Offerer - COMPLETE ONLY IF OFFERER IS A CORPORATION**

No response

COMPLETE AND UPLOAD FORM IN ATTACHMENTS SECTION ONLY IF OFFERER IS A CORPORATION

**Lobbying Report Standard Form-LLL, "disclosure Form to Report Lobbying,"**

No response

If you answered "I HAVE Lobbied per above" to attribute #66, please download and complete and upload the Standard Form-LLL, "disclosure Form to Report Lobbying," in the Response attachments section.

**Confidentiality Form**

220106 CONFIDENTIALITY CLAIM FORM.pdf

REQUIRED CONFIDENTIALITY FORM. Complete the form according to your company requirements, make any desired attachments and upload to the appropriate section under "Response Attachments" THIS FORM DETERMINES HOW ESC8/TIPS RESPONDS TO LEGAL PUBLIC INFORMATION REQUESTS.

**Bonding Capacity Letter from Surety/Insurance Company**

2022 Bond Letter.pdf

REQUIRED IF YOU ARE PROPOSING ON PART 2 -Attach the Bonding Capacity Letter from Surety/Insurance Company. if you do not have one available at time of proposal, attached a letter stating it will be submitted when received to prove bonding capacity. No award can be made until official bonding capacity letter is received by TIPS.

**Current W-9 Tax Form**

W9 2022.pdf

You are required by TIPS to upload a current W-9 Internal Revenue Service (IRS) Tax Form for your entity. This form will be utilized by TIPS to properly identify your entity.

## Bid Attributes

|          |  |
|----------|--|
| <b>1</b> | <b>Yes - No</b><br>Disadvantaged/Minority/Women Business Enterprise - D/M/WBE/Federal HUBZone (Required by some participating governmental entities). Vendor certifies that their firm is a D/M/WBE or HUBZone? Vendor must upload proof of certification to the "Response Attachments" D/M/WBE CERTIFICATES section.<br><input type="text" value="No"/>   |
| <b>2</b> | <b>Yes - No</b><br>Historically Underutilized Business - HUB (Required by some participating governmental entities) Vendor certifies that their firm is a HUB as defined by the State of Texas at <a href="https://comptroller.texas.gov/purchasing/vendor/hub/">https://comptroller.texas.gov/purchasing/vendor/hub/</a> .<br>Proof may be submitted. Vendor must upload proof of certification to the "Response Attachments" HUB CERTIFICATES section.<br><input type="text" value="No"/>  |
| <b>3</b> | <b>Yes - No</b><br>The Vendor can provide services and/or products to all 50 US States?<br><input type="text" value="No"/>   |
| <b>4</b> | <b>States Served:</b><br>If answer is NO to question #3, please list which states can be served. (Example: AR, OK, TX)<br><input type="text" value="AR,OK,TX,KS,MS,TN,LA,TN,GA,MO"/>   |
| <b>5</b> | <b>Company and/or Product Description:</b><br>This information will appear on the TIPS website in the company profile section, if awarded a TIPS contract. (Limit 750 characters.)<br><input type="text" value="Mechanical, Commercial HVAC, Building Automation Controls, and Sheet Metal Contractor performing Design Build, Retrofit, Repair, Maintenance along with financing. We are Arkansas's largest Heating and Air Contractor in the State providing our customers with an end to end solution. We conveniently offer a single point of contact for the complete HVAC system for the life of the project. Only one party is responsible and accountable – Middleton Heat &amp; Air."/> |
| <b>6</b> | <b>Primary Contact Name</b><br>Primary Contact Name<br><input type="text" value="Cody Yeoman"/>  |
| <b>7</b> | <b>Primary Contact Title</b><br>Primary Contact Title<br><input type="text" value="Sales Manager"/>  |
| <b>8</b> | <b>Primary Contact Email</b><br>Primary Contact Email<br><input type="text" value="cyeoman@middletoninc.com"/>   |
| <b>9</b> | <b>Primary Contact Phone</b><br>Enter 10 digit phone number. (No dashes or extensions)<br>Example: 8668398477<br><input type="text" value="5015291055"/>   |

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| <b>10</b> | <b>Primary Contact Fax</b><br>Enter 10 digit phone number. (No dashes or extensions)<br>Example: 8668398477<br><input type="text" value="5018478379"/> |
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| <b>11</b> | <b>Primary Contact Mobile</b><br>Enter 10 digit phone number. (No dashes or extensions)<br>Example: 8668398477<br><input type="text" value="5015291055"/> |
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| <b>12</b> | <b>Secondary Contact Name</b><br>Secondary Contact Name<br><input type="text" value="Mark McCaslin"/> |
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| <b>13</b> | <b>Secondary Contact Title</b><br>Secondary Contact Title<br><input type="text" value="COO"/> |
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| <b>14</b> | <b>Secondary Contact Email</b><br>Secondary Contact Email<br><input type="text" value="mmccaslin@middletoninc.com"/> |
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| <b>15</b> | <b>Secondary Contact Phone</b><br>Enter 10 digit phone number. (No dashes or extensions)<br>Example: 8668398477<br><input type="text" value="5016071525"/> |
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| <b>16</b> | <b>Secondary Contact Fax</b><br>Enter 10 digit phone number. (No dashes or extensions)<br>Example: 8668398477<br><input type="text" value="5018478379"/> |
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| <b>17</b> | <b>Secondary Contact Mobile</b><br>Enter 10 digit phone number. (No dashes or extensions)<br>Example: 8668398477<br><input type="text" value="5016071525"/> |
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| <b>18</b> | <b>Admin Fee Contact Name</b><br>Admin Fee Contact Name. This person is responsible for paying the admin fee to TIPS.<br><input type="text" value="Valerie Angel"/> |
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| <b>19</b> | <b>Admin Fee Contact Email</b><br>Admin Fee Contact Email<br><input type="text" value="vangel@middletoninc.com"/> |
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| <b>20</b> | <b>Admin Fee Contact Phone</b><br>Enter 10 digit phone number. (No dashes or extensions)<br>Example: 8668398477<br><input type="text" value="5016808227"/> |
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| <b>21</b> | <b>Purchase Order Contact Name</b><br>Purchase Order Contact Name. This person is responsible for receiving Purchase Orders from TIPS.<br><input type="text" value="Kim Jenkins"/> |
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| <b>22</b> | <b>Purchase Order Contact Email</b><br>Purchase Order Contact Email<br><input type="text" value="kjenkins@middletoninc.com"/> |
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| <b>23</b> | <b>Purchase Order Contact Phone</b><br>Enter 10 digit phone number. (No dashes or extensions)<br>Example: 8668398477<br><input type="text" value="5018470371"/> |
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| <b>24</b> | <b>Company Website</b><br>Company Website (Format - www.company.com)<br><input type="text" value="www.middletoninc.com"/> |
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| <b>25</b> | <b>Entity D/B/A's and Assumed Names</b><br>Please identify all of your entity's assumed names and D/B/A's. Please note that you will be identified publicly by the legal name under which you responded to this solicitation unless you organize otherwise with TIPS after award.<br><input type="text" value="Middleton Inc., Middleton Heat &amp; Air"/> |
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| <b>26</b> | <b>Primary Address</b><br>Primary Address<br><input type="text" value="22039 Interstate 30"/> |
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| <b>27</b> | <b>Primary Address City</b><br>Primary Address City<br><input type="text" value="Bryant"/> |
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| <b>28</b> | <b>Primary Address State</b><br>Primary Address State (2 Digit Abbreviation)<br><input type="text" value="Arkansas"/> |
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| <b>29</b> | <b>Primary Address Zip</b><br>Primary Address Zip<br><input type="text" value="72022"/> |
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**3**  
**0** **Search Words:**

Please list search words to be posted in the TIPS database about your company that TIPS website users might search. Words may be product names, manufacturers, or other words associated with the category of award. **YOU MAY NOT LIST NON-CATEGORY ITEMS.** (Limit 500 words) (Format: product, paper, construction, manufacturer name, etc.)

HVAC, Heating & Air, plumbing, mechanical, sheet metal, controls, building automation, VRF, chillers, boilers, cooling towers, Liebert, GreenHeck, PoolPak, Heating & Cooling, duct, Trane, Carrier, Lennox, Rheem, Goodman, Bryant, Arkansas, portable air conditioning, service, repair, air conditioning, unit replacement, new construction, replacement, heat pump, furnace, minisplit, Mitsubishi, Daiken, Samsung, air handler, VAV, duct heaters, hanging heaters, thermostats, tube heater, big ass fans, air movers, macro air

**3**  
**1** **Do you want TIPS Members to be able to spend Federal grant funds with you if awarded? Is it your intent to be able to sell to our members regardless of the fund source, whether it be local, state or federal?**

Most of our members receive Federal Government grants or other funding and they make up a significant portion of their budgets. The Members need to know if your company is willing to sell to them when they spend federal budget funds on their purchase. There are attributes that follow that include provisions from the federal regulations in 2 CFR part 200, etc. Your answers will determine if your award will be designated as eligible for TIPS Members to utilize federal funds with your company.

Do you want TIPS Members to be able to spend Federal funds, at the Member's discretion, with you?

**3**  
**2** **Yes - No**

Certification of Residency - The vendor's ultimate parent company or majority owner:

(A) has its principal place of business in Texas;

OR

(B) employs at least 500 persons in Texas?

This question is required as a data gathering function for information to our members making purchases with awarded vendors. Does not affect scoring with TIPS.

**3**  
**3** **Company Residence (City)**

Vendor's principal place of business is in the city of?

**3**  
**4** **Company Residence (State)**

Vendor's principal place of business is in the state of?

**35 Discount Offered - CAUTION READ CAREFULLY BECAUSE VENDORS FREQUENTLY MAKE MISTAKES ON THIS ATTRIBUTE QUESTION**

Remember this is a MINIMUM discount percentage so, be sure the discount percentage inserted here can be applied to ANY OFFERING OF GOODS OR SERVICES THROUGH OUT THE LIFE OF THE CONTRACT

CAUTION: BE CERTAIN YOU CAN HONOR THIS MINIMUM DISCOUNT PERCENTAGE ON ANY OFFERED SERVICE OR GOOD NOW OR DURING THE LIFE OF THE CONTRACT.

If awarded on PART 1, what is the MINIMUM percentage discount off of any item or service you offer to TIPS Members that is in your regular catalog (as defined in the solicitation specifications document), website, store or shelf pricing or when adding new goods or services to your offerings during the life of the contract? The resulting price of any goods or services Catalog list prices after this discount is applied is a ceiling on your pricing and not a floor because, in order to be more competitive in the individual circumstance, you may offer a larger discount depending on the items or services purchased and the quantity at time of sale. Must answer with a number between 0% and 100%.

**36 MINIMUM Discount Term**

If awarded on PART 1, does the vendor agree to at least offer, for the life of the Agreement, the Minimum Discount Percentage off list or catalog proposed by Vendor in response to the Attribute entitled "Discount Offered - CAUTION READ CAREFULLY BECAUSE VENDORS FREQUENTLY MAKE MISTAKES ON THIS ATTRIBUTE QUESTION"? TIPS will utilize this response to satisfy the Long Term Cost scoring evaluation criteria on PART 1. A "YES" answer will be awarded the maximum 10 points for this criterion out of the 100 total points and a "NO" answer is awarded 0 points.

**37 Yes - No**

If awarded on Part 1 of the TIPS Contract, for the duration of the Contract, Vendor agrees to provide, upon request, their then current catalog pricing, as defined in the solicitation and below, to TIPS upon request for any goods and services offered on PART 1 of the Vendor's TIPS Contract, if any.

"Catalog" means the available list of tangible personal property or services, in the most current listing, regardless of date, during the life of the contract, that takes the form of a catalog, price list, schedule, shelf price or other form that:

- A. is regularly maintained by the manufacturer or Vendor of an item; and
- B. is either published or otherwise available for inspection by a customer during the purchase process;
- C. to which the minimum discount proposed by the proposing Vendor may be applied.

**38 TIPS administration fee**

By submitting a proposal, I agree that all pricing submitted to TIPS shall include the participation fee, as designated in the solicitation or as otherwise agreed in writing and shall be remitted to TIPS by the Vendor or the vendor's named resellers and as agreed in the Vendor agreement. I agree that the fee shall not and will not be added by the vendor as a separate line item on a TIPS member invoice, quote, proposal or any other written communications with the TIPS member.

**3** **REQUIRED FOR PART 2 JOC - PRICING OF Regular Hours Coefficient**

**9** **What is your regular hours coefficient for the RS Means Price Book? (FAILURE TO RESPOND PROHIBITS PART 2 JOC EVALUATION)**

Remember that this is a ceiling price proposed. You can discount lower than your proposed contract coefficient, but not higher.

This is one of three pricing questions that are required for consideration for award on this solicitation. Please consider your answer carefully. An explanation of the TIPS scoring of pricing is included in the attachments for your information.

The below is an Example of how pricing model works (not intended to influence your proposed coefficient, you should propose a coefficient that you determine is right for your business):

To propose the exact pricing as the RS Means Unit Price Book, you would insert a 1.0 and to propose a 5% discount for the RS Means Price Book would be a .95 regular hours coefficient and so on.

**4** **REQUIRED FOR PART 2 JOC - PRICING OF After Hours Coefficient**

**0** **What is your after hours coefficient for the RS Means Price Book for work performed after normal working hours? (FAILURE TO RESPOND PROHIBITS PART 2 JOC EVALUATION)**

Remember that this is a ceiling price proposed. You can discount to any TIPS Member customer a lower coefficient than your proposed contract coefficient, but not higher.

This is one of three pricing questions that are required for consideration for award on this solicitation. Please consider your answer carefully. An explanation of the TIPS scoring of pricing titled "Pricing Coefficient Instruction" is included in the attachments for your information.

The below is an EXAMPLE of how the pricing model works (It is not intended to influence your proposed coefficient, you should propose a coefficient that you determine is reasonable for your business for the life of the contract): The most common after hours coefficient is time and a half of the RS Means Unit Price Book prices. To illustrate this coefficient, if your regular hours coefficient is .95, your after hours coefficient would be 1.45.

**4** **REQUIRED FOR 2 PART JOC - PRICING for Markup of Non-Prepriced Items in RS Means Unit Price Book**

**1** **YOU MUST ENTER A PERCENTAGE NOT A COEFFICIENT.**

**What is your proposed Markup Percentage on materials not found in the RS Means Price Book? (FAILURE TO RESPOND PROHIBITS PART 2 JOC EVALUATION)**

If any materials being utilized for a project cannot be found in the RS Means Price Book, this question is what is the markup percentage on those materials?

When answering this question please insert the number that represents your percentage of proposed markup. **YOU MUST ENTER A PERCENTAGE NOT A COEFFICIENT.**

Example: if you are proposing a 30 percent markup, please insert the number "30".

Remember that this is a ceiling markup. You may markup a lesser percentage to the TIPS Member customer when pricing the project, but not a greater percentage.

EXAMPLE: You need special materials that are not in the RS Means Unit Price Book for a project. You would buy the materials and mark them up to the TIPS Member customer by the percentage you propose in this question. If the materials cost you, the contractor, \$100 and you proposed a markup on this question for the material of 30 percent, then you would charge the TIPS Member customer \$130 for the materials.

**YOU MUST ENTER A PERCENTAGE NOT A COEFFICIENT.**

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| 4<br>2 | <p><b>Yes - No</b></p> <p>Vendor agrees to remit to TIPS the required administration fee or, if resellers are named, guarantee the fee remittance by or for the reseller named by the vendor?</p> <p>TIPS/ESC Region 8 is required by Texas Government Code § 791 to be compensated for its work and thus, failure to agree shall render your response void and it will not be considered.</p> <p><input type="text" value="Agreed"/></p> |
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|        |   |
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| 4<br>3 | <p><b>TIPS Administration Fee Paid by Vendor - Not Charged to Customer</b></p> <p>Vendor understands and agrees that it owes TIPS a TIPS Administration Fee (published in the RFP/RCSP document) on every TIPS sale made under an awarded TIPS Contract. Vendor further understands and agrees that Vendor shall submit pricing with this proposal which includes and accounts for the TIPS Administration Fee and <b>shall never</b> separately charge the TIPS Member Customer the TIPS fee or add the TIPS Administration Fee line item to an invoice or similar purchase document. Submission of this proposal is Vendor's certification that Vendor agrees to this mandatory term.</p> |
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|        |  |
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| 4<br>4 | <p><b>Yes - No</b></p> <p>Do you offer additional discounts to TIPS members for large order quantities or large scope of work?</p> <p><input type="text" value="Yes"/></p> |
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| 4<br>5 | <p><b>Years in Business as Proposing Company</b></p> <p>Years in business as proposing company?</p> <p><input type="text" value="46"/></p> |
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| 4<br>6 | <p><b>Resellers:</b></p> <p>If awarded on PART 1, does the vendor have resellers that it will name under this contract?</p> <p>Resellers are defined as other companies that sell your products under an agreement with you, as the awarded vendor of TIPS.</p> <p>EXAMPLE: BIGmart is a reseller of ACME brand televisions. If ACME were a TIPS awarded vendor, then ACME would list BIGmart as a reseller.</p> <p>(Resellers are only permitted under a PART 1 award. If applicable, Vendor should add all Authorized Resellers within the TIPS Vendor Portal upon award).</p> <p><input type="text" value="No"/></p> |
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|        |  |
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| 4<br>7 | <p><b>Right of Refusal</b></p> <p>The proposing vendor has the right not to sell under the awarded agreement with a TIPS member at vendor's discretion unless required by law.</p> |
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**NON-COLLUSIVE BIDDING CERTIFICATE**

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

- 1) This bid or proposal has been independently arrived at without collusion with any other Bidder or with any Competitor;
- 2) This bid or proposal has not been knowingly disclosed and will not be knowingly disclosed, prior to the opening of bids, or proposals for this project, to any other Bidder, Competitor or potential competitor:
- 3) No attempt has been or will be made to induce any other person, partnership or corporation to submit or not to submit a bid or proposal;
- 4) The person signing this bid or proposal certifies that he has fully informed himself regarding the accuracy of the statements contained in this certification, and under the penalties being applicable to the Bidder as well as to the person signing in its behalf.

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

4  
9

**CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ -Do you have any CONFLICT OF INTEREST TO REPORT OR DISCLOSE under this statutory requirement?**

Do you have any CONFLICT OF INTEREST TO REPORT OR DISCLOSE under this statutory requirement? YES or NO

If you have a conflict of interest as described in this form or the Local Government Code Chapter 176, cited therein- you are required to complete and file with TIPS. The Form CIQ is one of the attachments to this solicitation.

There is an optional upload for this form provided if you have a conflict and must file the form

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**Filing of Form CIQ**

If yes (above), have you filed a form CIQ by uploading the form to this RFP as directed above?

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1

**Regulatory Standing**

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

5  
2

**Regulatory Standing**

Regulatory Standing explanation of no answer on previous question.

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

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

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

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

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

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

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

**5**  
**4** **Suspension or Debarment Instructions**

Instructions for Certification:

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

**5**  
**5** **Suspension or Debarment Certification**

By answering yes, you certify that no federal suspension or debarment is in place, which would preclude receiving a federally funded contract as described above.

Yes

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## Non-Discrimination Statement and Certification

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

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

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

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

All U.S. Departments, including the USDA are equal opportunity provider, employer, and lender.

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

Yes, I certify (Yes)

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## 2 CFR PART 200 Contract Provisions Explanation

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

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

The ESC Region 8 and TIPS Members are the subgrantee or Subrecipient by definition. Most of the provisions are located in 2 CFR PART 200 - Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards at 2 CFR PART 200. Others are included within 2 CFR part 200 et al.

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.

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**2 CFR PART 200 Contracts**

Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

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

Does vendor agree?

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**2 CFR PART 200 Termination**

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

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

Does vendor agree?

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**2 CFR PART 200 Clean Air Act**

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

Pursuant to the Clean Air Act, et al above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires that the proposer certify that during the term of an award by the ESC Region 8 and TIPS Members resulting from this procurement process the vendor agrees to comply with all of the above regulations, including all of the terms listed and referenced therein.

Does vendor agree?

**6**  
**1** **2 CFR PART 200 Byrd Anti-Lobbying Amendment**

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

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that during the term and during the life of any contract with ESC Region 8 and TIPS Members resulting from this procurement process the vendor certifies to the terms included or referenced herein.

Does vendor agree?

**6**  
**2** **2 CFR PART 200 Federal Rule**

Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$250,000)

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that in performance of the contracts, subcontracts, and subgrants of amounts in excess of \$250,000, the vendor will be in compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

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

**6**  
**3** **2 CFR PART 200 Procurement of Recovered Materials**

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

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

**6 4 2 CFR PART 200 Rights to Inventions**

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.

Pursuant to the above, when the foregoing applies to ESC Region 8 and TIPS Members, Vendor certifies that during the term of an award resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in the Federal rule above.

Does vendor agree?

**6 5 2 CFR PART 200 Domestic Preferences for Procurements**

As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of 2 CFR Part 200.322, “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Moreover, for purposes of 2 CFR Part 200.322, “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum, plastics and polymer-based products such as polyvinyl chloride pipe, aggregates such as concrete, glass, including optical fiber, and lumber.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, Vendor certifies that to the greatest extent practicable Vendor will provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

Does vendor agree?

**6 6 2 CFR PART 200 Ban on Foreign Telecommunications**

Federal grant funds may not be used to purchase equipment, services, or systems that use “covered telecommunications” equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. “Covered telecommunications” means purchases from Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), and video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, Vendor certifies that Vendor will not purchase equipment, services, or systems that use “covered telecommunications”, as defined by 2 CFR §200.216 equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Does vendor agree?

**6**  
**7** **2 CFR PART 200 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.”

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

Does vendor agree?

**6**  
**8** **2 CFR PART 200 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)**

[Applicable ONLY to contracts in excess of \$100,000 involving mechanics or laborers.] Contract Work Hours and Safety Standards Act (40 U.S.C. 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 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 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 U.S.C. 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.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members on qualifying contracts, Vendor certifies that Vendor will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act during the term of an award for all contracts by the District resulting from this procurement process.

Does vendor agree?

**6**  
**9** **2 CFR PART 200 Contract Cost & Price**

For contracts more than the simplified acquisition threshold currently set at \$250,000, a TIPS Member may, in very rare circumstances, be required to negotiate profit as a separate element of the price pursuant to 2 C.F.R. 200.324(b). Under those circumstances, Vendor agrees to provide information and negotiate with the TIPS Member regarding profit as a separate element of the price. However, Vendor certifies that the total price charged by the Vendor shall not exceed the Vendor’s TIPS pricing and pricing terms proposed.

Does Vendor Agree?



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**FEMA Fund Certifications**

Submission of this proposal is Vendor’s certification that Vendor agrees to this term. Vendor certifies that **IF and when** Vendor accepts a TIPS purchase paid for in full or part with FEMA funds, Vendor certifies that:

(1) Vendor agrees to provide the TIPS Member, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to and rights to reproduce any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Vendor agrees to provide the FEMA Administrator or an authorized representatives access to construction or other work sites pertaining to the work being completed under the contract. Vendor acknowledges and agrees that no language in this contract or the contract with the TIPS Member is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(2) The Vendor shall not use the Department of Homeland Security’s seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

(3) The Vendor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

(4) The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

(5) The Vendor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Vendor’s actions pertaining to this contract.

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**Certification of Compliance with the Energy Policy and Conservation Act**

When appropriate and to the extent consistent with the law, Vendor certifies that it will comply with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq; 49 C.F.R. Part 18) and any mandatory standards and policies relating to energy efficiency which are contained in applicable state energy conservation plans issued in compliance with the Act.

Does Vendor agree?

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**Certification Regarding Lobbying**

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal Funds

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

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**Lobbying Report Standard Form-LLL, "disclosure Form to Report Lobbying,"**

ONLY IF you answered "I HAVE Lobbied per above" to attribute above titled "[Certification Regarding Lobbying](#)", please download and complete and upload the Standard Form-LLL, "disclosure Form to Report Lobbying," in the Response attachments section.

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**Subcontracting with small and minority businesses, women's business enterprises, and labor surplus area firms.**

Do you ever anticipate the possibility of subcontracting any of your work under this award if you are successful?

IF NO, DO NOT ANSWER THE NEXT ATTRIBUTE QUESTION. . IF YES, and ONLY IF YES, you must answer the next question YES if you want a TIPS Member to be authorized to spend Federal Grant Funds for Procurement.

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**ONLY IF YES TO THE PREVIOUS QUESTION OR if you ever do subcontract any part of your performance under the TIPS Agreement, do you agree to comply with the following federal requirements?**

ONLY IF YES TO THE ABOVE QUESTIONS OR if you ever do subcontract any part of your performance under the TIPS Agreement,

do you agree to comply with the following federal requirements?

Federal Regulation 2 CFR §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. (a)The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce ; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs(1) through (5) of this section.

No response

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**If proposing on PART 2, Davis-Bacon Act compliance.**

IF proposing on PART 2, Texas Statute requires compliance with Davis-Bacon Act, as amended (40 U.S.C. 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 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part S, "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 U.S.C. 314S), 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.

BY SUBMITTING A PROPOSAL FOR PART 2 OF THIS SOLICITATION, the Vendor agrees, AS REQUIRED BY LAW, to comply with the Davis Bacon Act, IF APPLICABLE and if proposing on PART 2 of this solicitation.

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7** **Indemnification**

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

Do you agree to these terms?

Yes, I Agree (Yes)

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8** **Remedies**

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

Do you agree to these terms?

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9** **Remedies Explanation of No Answer**

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0** **Choice of Law**

The agreement between the Vendor and TIPS/ESC Region 8 and any addenda or other additions resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles. THIS DOES NOT APPLY to a vendor's agreement entered into with a TIPS Member, as the Member may be located outside Texas.

Do you agree to these terms?

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| <b>8</b><br><b>1</b> | <b>Venue, Jurisdiction and Service of Process</b> <p>Any proceeding, involving Region 8 ESC or TIPS, arising out of or relating to this procurement process or any contract issued by TIPS resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Camp County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world. Any dispute resolution process other than litigation shall have venue in Camp County or Titus County Texas.</p> <p>Do you agree to these terms?</p> <input type="text" value="Agreed"/> |
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| <b>8</b><br><b>2</b> | <b>Alternative Dispute Resolution Explanation of No Answer</b><br><input type="text" value="No response"/> |
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| <b>8</b><br><b>3</b> | <b>Infringement(s)</b> <p>The successful vendor will be expected to indemnify and hold harmless the TIPS and its employees, officers, agents, representatives, contractors, assignees and designees from any and all third party claims and judgments involving infringement of patent, copyright, trade secrets, trade or service marks, and any other intellectual or intangible property rights attributed to or claims based on the Vendor's proposal or Vendor's performance of contracts awarded and approved.</p> <p>Do you agree to these terms?</p> <input type="text" value="Yes, I Agree"/> |
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| <b>8</b><br><b>4</b> | <b>Infringement(s) Explanation of No Answer</b><br><input type="text" value="No response"/> |
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| <b>8</b><br><b>5</b> | <b>Acts or Omissions</b> <p>The successful vendor will be expected to indemnify and hold harmless the TIPS, its officers, employees, agents, representatives, contractors, assignees and designees from and against any and all liability, actions, claims, demands or suits, and all related costs, attorney's fees and expenses arising out of, or resulting from any acts or omissions of the vendor or its agents, employees, subcontractors, or suppliers in the execution or performance of any agreements ultimately made by TIPS and the vendor.</p> <p>Do you agree to these terms?</p> <input type="text" value="Yes, I Agree"/> |
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| <b>8</b><br><b>6</b> | <b>Acts or Omissions Explanation of No Answer</b><br><input type="text" value="No response"/> |
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| <b>8</b><br><b>7</b> | <b>Contract Governance</b> <p>Any contract made or entered into by the TIPS is subject to and is to be governed by Section 271.151 et seq, Tex Loc Gov't Code. Otherwise, TIPS does not waive its governmental immunities from suit or liability except to the extent expressly waived by other applicable laws in clear and unambiguous language.</p> <input checked="" type="checkbox"/> Yes, I Agree (Yes) |
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## Payment Terms and Funding Out Clause

### Payment Terms:

TIPS or TIPS members shall not be liable for interest or late payment fees on past due balances at a rate higher than permitted by the laws or regulations of the jurisdiction of the TIPS Member.

### Funding Out Clause:

Vendor agrees to abide by the laws and regulations, including Texas Local Government Code § 271.903, or any statutory or regulatory limitations of the jurisdiction of any TIPS Member which governs contracts entered into by the Vendor and TIPS or a TIPS Member that requires all contracts approved by TIPS or a TIPS Member are subject to the budgeting and appropriation of currently available funds by the entity or its governing body.

See statute(s) for specifics or consult your legal counsel.

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

Do you agree to these terms?

Yes, I Agree (Yes)

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## Insurance and Fingerprint Requirements Information

### Insurance

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

### Fingerprint

It is possible that a vendor may be subject to Chapter 22 of the Texas Education Code. The Texas Education Code, Chapter 22, Section 22.0834 & 22.08341. Statutory language may be found at: <http://www.statutes.legis.state.tx.us/>

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

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

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

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

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

## Texas Education Code Chapter 22 Contractor Certification for Contractor Employees

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

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

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

I certify that:

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

**OR**

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

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

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

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

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

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

None

**9 1 Texas Business and Commerce Code § 272 Requirements as of 9-1-2017**

SB 807 prohibits construction contracts to have provisions requiring the contract to be subject to the laws of another state, to be required to litigate the contract in another state, or to require arbitration in another state. A contract with such provisions is voidable. Under this new statute, a "construction contract" includes contracts, subcontracts, or agreements with (among others) architects, engineers, contractors, construction managers, equipment lessors, or materials suppliers. "Construction contracts" are for the design, construction, alteration, renovation, remodeling, or repair of any building or improvement to real property, or for furnishing materials or equipment for the project. The term also includes moving, demolition, or excavation. BY RESPONDING TO THIS SOLICITATION, AND WHEN APPLICABLE, THE PROPOSER AGREES TO COMPLY WITH THE TEXAS BUSINESS AND COMMERCE CODE § 272 WHEN EXECUTING CONTRACTS WITH TIPS MEMBERS THAT ARE TEXAS GOVERNMENT ENTITIES.

**9 2 Texas Government Code 2270 & 2270 Verification Form**

Texas Government Code 2270 & 2271 Verification Form  
If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2271 of the Texas Government Code, the Vendor hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Vendor, if any (the "Vendor Companies"), boycotts Israel, and the Vendor agrees that the Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.  
Our entity further certifies that it is is not listed on and we do not do business with companies prohibited by Texas Government Code 2270 or that are on the Texas Comptroller of Public Accounts list of Designated Foreign Terrorists Organizations per Texas Gov't Code 2270.0153 found at <https://comptroller.texas.gov/purchasing/docs/foreign-terrorist.pdf>  
I swear and affirm that the above is true and correct.

YES

**9 3 Logos and other company marks**

Please upload your company logo to be added to your individual profile page on the TIPS website. If any particular specifications are required for use of your company logo, please upload that information under the "Logo and Other Company Marks" section under the "Response Attachment" tab. Preferred Logo Format: 300 x 225 px - .png, .eps, .jpeg preferred

Potential uses of company logo:

- \* Your Vendor Profile Page of TIPS website
- \* Potentially on TIPS website scroll bar for Top Performing Vendors
- \* TIPS Quarterly eNewsletter sent to TIPS Members
- \* Co-branding Flyers and or email blasts to our TIPS Members (Permission and approval will be obtained before publishing)



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| <b>9</b><br><b>4</b> | <b>Solicitation Deviation/Compliance</b><br>Does the vendor agree with the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation?<br><input type="text" value="Yes"/> |
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| <b>9</b><br><b>5</b> | <b>Solicitation Exceptions/Deviations Explanation</b><br>If the bidder intends to deviate from the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation, all such deviations must be listed on this attribute, with complete and detailed conditions and information included or attached.<br>TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any bid based upon any deviations indicated below or in any attachments or inclusions.<br>In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Standard Terms and Conditions, Item Specifications, and all other information contained in this Solicitation.<br><input type="text" value="No response"/> |
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| <b>9</b><br><b>6</b> | <b>Agreement Deviation/Compliance</b><br>Does the vendor agree with the language in the Vendor Agreement?<br><input type="text" value="Yes"/> |
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| <b>9</b><br><b>7</b> | <b>Agreement Exceptions/Deviations Explanation</b><br>If the proposing Vendor desires to deviate from the Vendor Agreement language, all such deviations must be listed on this attribute, with complete and detailed conditions and information included. TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any proposal based upon any deviations indicated below. In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Vendor Agreement.<br><input type="text" value="No response"/> |
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| <b>9</b><br><b>8</b> | <b>Felony Conviction Notice</b><br>Texas Education Code, Section 44.034, Notification of Criminal History, Subsection (a), states "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony." Subsection (b) states "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract." (c) This section does not apply to a publicly held corporation. The person completing this proposal certifies that they are authorized to provide the answer to this question.<br>Select A., B. or C.<br>A. My firm is a publicly held corporation; therefore, this reporting requirement is not applicable.<br>OR B. My firm is not owned nor operated by anyone who has been convicted of a felony, OR<br>C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony. (if you answer C below, you are required to provide information in the next attribute.<br><input type="text" value="B. Firm not owned nor operated by felon; per above"/> |
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**99** **If you answered C. My Firm is owned or operated by a felon to the previous question, you are REQUIRED TO ANSWER THE FOLLOWING QUESTIONS.**

If you answered C. My Firm is owned or operated by a felon to the previous question, you must provide the following information.

1. Name of Felon(s)
2. The named person's role in the firm, and
3. Details of Conviction(s).

**100** **Required Confidentiality Claim Form**

Required Confidentiality Claim Form

This completed form is required by TIPS. By submitting a response to this solicitation you agree to download from the "Attachments" section, complete according to the instructions on the form, then upload the completed form, with any confidential attachments, if applicable, to the "Response Attachments" section titled "Confidentiality Form" in order to provide to TIPS the completed form titled, "CONFIDENTIALITY CLAIM FORM". **THIS REQUIRED PROCESS IS THE ONLY WAY TO DEEM PROPOSAL DOCUMENTATION CONFIDENTIAL ANY OTHER CONFIDENTIAL DESIGNATION WILL BE DISREGARDED UNLESS THE DOCUMENT IS IDENTIFIED BY AND ATTACHED TO THE REQUIRED FORM.** By completing this process, you provide us with the information we require to comply with the open record laws of the State of Texas as they may apply to your proposal submission. If you do not provide the form with your proposal, an award will not be made if your proposal is qualified for an award, until TIPS has an accurate, completed form from you.

Read the form carefully before completing and if you have any questions, email bids@tips-usa.com.

**101** **Member Access to Vendor Proposal**

Notwithstanding any other information provided in this solicitation or Vendor designation of certain documentation as confidential or proprietary, Vendor's acceptance of this TIPS Contract constitutes Vendor's consent to the disclosure of Vendor's comprehensive proposal, including any information deemed confidential or proprietary, **to TIPS Members**. The proposing Vendor agrees that TIPS shall not be responsible or liable for any use or distribution of information or documentation by TIPS Members or any other party. By submitting this proposal, Vendor certifies the foregoing.

**102** **Choice of Law clauses for TIPS Members**

If the vendor is awarded a contract with TIPS under this solicitation, the vendor agrees to make any Choice of Law clauses in any contract or agreement entered into between the awarded vendor and with a TIPS member entity to read as follows: "Choice of law shall be the laws of the state where the customer resides" or words to that effect.

**103** **Venue of dispute resolution with a TIPS Member**

In the event of litigation or use of any dispute resolution model when resolving disputes with a TIPS member entity as a result of a transaction between the vendor and TIPS or the TIPS member entity, the Venue for any litigation or other agreed upon model shall be in the state and county where the customer resides unless otherwise agreed by the parties at the time the dispute resolution model is decided by the parties.

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**Indemnity Limitation with TIPS Members**

Texas and other states restrict by law or state Constitution the ability of a governmental entity to indemnify others. TIPS requires that any contract entered into between a vendor and TIPS or a TIPS Member as a result of an award under this Solicitation limit the requirement that the Customer indemnify the Vendor by either eliminating any such indemnity requirement clauses in any agreements, contracts or other binding documents **OR** by prefacing all indemnity clauses required of TIPS or the TIPS Member entity with the following: "To the extent permitted by the laws or the Constitution of the state where the customer resides, ".

**Agreement is a required condition to award of a contract resulting from this Solicitation.**

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**Arbitration Clauses**

Except for certain circumstances, TIPS forbids a mandatory arbitration clause in any contract or agreement entered into between the awarded vendor with TIPS or a TIPS member entity. Does the vendor agree to exclude any arbitration requirement in any contracts or agreement entered into between TIPS or a TIPS member entity through an awarded contract with TIPS?

**Agreement is a required condition to award of a contract resulting from this Solicitation.**

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**Upload of Current W-9 Required**

Please note that you are required by TIPS to upload a current W-9 Internal Revenue Service (IRS) Tax Form for your entity. This form will be utilized by TIPS to properly identify your entity.

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**CERTIFICATION REGARDING BOYCOTTING CERTAIN ENERGY COMPANIES (Texas law as of September 1, 2021)**

**By submitting a proposal to this Solicitation, you certify that you agree, when it is applicable, to the following required by Texas law as of September 1, 2021:**

If (a) company is not a sole proprietorship; (b) company has ten (10) or more full-time employees; and (c) this contract has a value of \$100,000 or more that is to be paid wholly or partly from public funds, the following certification shall apply; otherwise, this certification is not required. Pursuant to Tex. Gov't Code Ch. 2274 of SB 13 (87<sup>th</sup> session), the company hereby certifies and verifies that the company, or any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of these entities or business associations, if any, does not boycott energy companies and will not boycott energy companies during the term of the contract. For purposes of this contract, the term "company" shall mean an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, that exists to make a profit. The term "boycott energy company" shall mean "without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (a) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law, or (b) does business with a company described by paragraph (a)." See Tex. Gov't Code § 809.001(1).

## **CERTIFICATION PROHIBITING DISCRIMINATION AGAINST FIREARM AND AMMUNITION INDUSTRIES (Texas law as of September 1, 2021)**

**By submitting a proposal to this Solicitation, you certify that you agree, when it is applicable, to the following required by Texas law as of September 1, 2021:**

If (a) company is not a sole proprietorship; (b) company has at least ten (10) full-time employees; (c) this contract has a value of at least \$100,000 that is paid wholly or partly from public funds; (d) the contract is not excepted under Tex. Gov't Code § 2274.003 of SB 19 (87<sup>th</sup> leg.); and (e) governmental entity has determined that company is not a sole-source provider or governmental entity has not received any bids from a company that is able to provide this written verification, the following certification shall apply; otherwise, this certification is not required.

Pursuant to Tex. Gov't Code Ch. 2274 of SB 19 (87<sup>th</sup> session), the company hereby certifies and verifies that the company, or association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary parent company, or affiliate of these entities or associations, that exists to make a profit, does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this contract against a firearm entity or firearm trade association. For purposes of this contract, "discriminate against a firearm entity or firearm trade association" shall mean, with respect to the entity or association, to: "(1) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (2) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (3) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association. See Tex. Gov't Code § 2274.001(3) of SB 19. "Discrimination against a firearm entity or firearm trade association" does not include: "(1) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (2) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency, or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association." See Tex. Gov't Code § 2274.001(3) of SB 19.

## **CERTIFICATION REGARDING CERTAIN FOREIGN-OWNED COMPANIES IN CONNECTION WITH CRITICAL INFRASTRUCTURE (Texas law as of September 1, 2021)**

**By submitting a proposal to this Solicitation, you certify that you agree, when it is applicable, to the following required by Texas law as of September 1, 2021:**

If (a) company is not a sole proprietorship; (b) company has at least ten (10) full-time employees; (c) this contract has a value of at least \$100,000 that is paid wholly or partly from public funds; (d) the contract is not excepted under Tex. Gov't Code § 2274.003 of SB 19 (87<sup>th</sup> leg.); and (e) governmental entity has determined that company is not a sole-source provider or governmental entity has not received any bids from a company that is able to provide this written verification, the following certification shall apply; otherwise, this certification is not required.

Pursuant to Tex. Gov't Code Ch. 2274 of SB 19 (87<sup>th</sup> session), the company hereby certifies and verifies that the company, or association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary parent company, or affiliate of these entities or associations, that exists to make a profit, does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this contract against a firearm entity or firearm trade association. For purposes of this contract, "discriminate against a firearm entity or firearm trade association" shall mean, with respect to the entity or association, to: "(1) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (2) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (3) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association. See Tex. Gov't Code § 2274.001(3) of SB 19. "Discrimination against a firearm entity or firearm trade association" does not include: "(1) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (2) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency, or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association." See Tex. Gov't Code § 2274.001(3) of SB 19.

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**Acknowledgement**

By submitting this proposal, Vendor certifies that it has read, examined, and understands all portions of this solicitation including but not limited to all attribute questions, attachments, solicitation documents, bid notes, and the Vendor Agreement(s). Vendor certifies that, if found to be necessary by the proposing vendor, vendor has sought the advice of counsel in understanding all portions of the solicitation.

## ADDENDUM NO. 1 TIPS 220106 Comprehensive HVAC (2 Part with JOC)

This Addendum #1 **does not** require action from responding Vendors and **does not** require resubmission for Vendors who have already submitted. It is only to correct a misstatement originally included in Pages 4-5 of the solicitation attachment entitled “220106 RCSP Specifications.” The original pages 4-5 provided for and discussed a term of years of, “approximately two (2) years with an option for renewal extension for an additional three (4) consecutive one (1) year terms.” This Addendum No. 1 corrects it to properly state and describe a term of, “approximately two (2) years with an option for renewal extension for an additional two (2) consecutive one (1) year terms” as expanded upon below. Specifically, the section entitled “Term of Agreement and Renewals” starting on Page 4 and ending on Page 5 of the attachment entitled “220106 RCSP Specifications” is now changed to read as follows:

### **“Term of Agreement and Renewals**

The Agreement with TIPS is for approximately two (2) years with an option for renewal extension for an additional two (2) consecutive one (1) year terms. The first renewal extension year shall be automatic unless the awarded vendor notifies TIPS of its objection to the first additional one (1) year renewal extension. If TIPS offers the second one (1) year renewal extension terms, the vendor will be notified by email to the primary contact of the awarded Vendor and shall be deemed accepted by the Vendor unless the awarded vendor notifies TIPS of its objection to the additional term. TIPS may or may not exercise the available extension(s) provided in the original solicitation beyond the base term. Whether or not to offer the renewal extension years is at the sole discretion of TIPS.

**“Start Date” for Term Calculation Purposes Only:** Regardless of actual award/effective date of Contract, for Agreement “term” calculation purposes only, the Agreement “start date” is the last day of the month that Award Notifications are anticipated as published in the Solicitation.

**Example:** *If the anticipated award date published in the Solicitation is August 27, 2020 but extended negotiations delay award until September 24, 2020 the end date of the resulting initial “two-year” term Agreement, (which is subject to an extension(s)) will still be August 31, 2022 in this example*

**“Termination Date”:** The scheduled Agreement “termination date” shall be the last day of the month of the month of the Original Solicitation’s Anticipated Award Date plus two years.

**Example:** *If the original term is approximately two years, and the solicitation provides an anticipated award date of August 27, 2020, the expiration date of the original two-year term shall be August 31, 2022 in this example.*

**Extensions:** Any extensions of the original term shall begin on the next day after the day the original term expires.

**Example Following the Previous Example:** *If TIPS offers a one-year extension, the expiration of the extended term shall be August 31, 2023 in this example.*

TIPS may offer to extend Vendor Agreements to the fullest extent the original Solicitation permits.

Total term of Agreement can be up to the number of years provided in the solicitation or as limited by statute.”

## ADDENDUM NO. 2 TIPS 220106 Comprehensive HVAC (2 Part with JOC)

This correction ***does not*** require action from responding Vendors and ***does not*** require resubmission for Vendors who have already submitted ***unless you wish to correct the optional form entitled "PART 2 JOC Pricing of Itemized List of Means Non-Prepriced Items" based on the information herein.*** This Addendum is only to correct a misstatement on the original optional attachment entitled "PART 2 JOC Pricing of Itemized List of Means Non-Prepriced Items." The attachment mistakenly provided for and discussed "Attribute 39." Specifically, any erroneous reference to "Attribute 39" on the specified attachment should be considered immediately replaced with "the Attribute Question asking for Pricing for Markup of Non-Prepriced Items in RS Means Unit Price Book." Please disregard any reference to Attribute 39 on this optional form and consider it to be referencing the Attribute Question asking for "Pricing for Markup of Non-Prepriced Items in RS Means Unit Price Book" instead.

**TIPS RFP 220106 Comprehensive HVAC (2 Part  
with JOC)**

**ALL INFORMATION  
MUST BE TYPED AND  
FORM MUST BE  
UPLOADED IN EXCEL  
FORMAT. DO NOT  
HANDWRITE  
REFERENCES AND DO  
NOT CONVERT EXCEL**

REFERENCES

Please provide five (5) references from five different entities, preferably from school districts or other governmental entities who have u  
the last three years. Additional references may be required. DO NOT INCLUDE TIPS EMPLOYEES AS A REFERENCE.

Verify your references emails  
are deliverable and that they  
agree to provide a reference.  
Failure to do this may delay the  
evaluation process.

You may provide more than five (5) references.

| Entity Name                  | Contact Person    | <b>VALID EMAIL IS REQUIRED</b>   | Phone        |
|------------------------------|-------------------|--|--------------|
| Little Rock School District  | Mike Ellis        | <a href="mailto:michael.ellis@lrsd.org">michael.ellis@lrsd.org</a>         | 501-813-5037 |
| North Little Rock            | Harrel Hatch      | <a href="mailto:hatchh@nlrsd.org">hatchh@nlrsd.org</a>                     | 501-771-8000 |
| City of Bryant               | Chris Treat       | <a href="mailto:ctreat@cityofbryant.com">ctreat@cityofbryant.com</a>       | 501-943-0444 |
| Geyer Springs Baptist Church | Doug Shelby       | <a href="mailto:dshelby@gsfbc.org">dshelby@gsfbc.org</a>                   | 501-765-4319 |
| Bryant School District       | Dr. Karen Walters | <a href="mailto:kwalters@bryantschools.org">kwalters@bryantschools.org</a> | 501-847-5600 |



**Required Confidential Information Status Form**

Middleton Inc. dba Middleton Heat & Air

Name of company

Cody Yeoman, Sales Manager

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

22039 Interstate 30

Bryant

AR 72022

501-529-1055

Address

City

State

ZIP

Phone

**ALL VENDORS MUST COMPLETE THE ABOVE SECTION**

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

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

**ALL VENDORS MUST COMPLETE ONE OF THE TWO OPTIONS BELOW.**

**OPTION 1:**

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

**IF CLAIMING PARTS OF YOUR PROPOSAL CONFIDENTIAL, YOU MUST ATTACH THE SHEETS TO THIS FORM AND LIST THE NUMBER OF TOTAL PAGES THAT ARE CONFIDENTIAL.**

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

Signature \_\_\_\_\_ Date \_\_\_\_\_

**OR**

**OPTION 2:**

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

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

Signature Cody J Yeoman Date 2/14/2022

February 15, 2022



**WESTFIELD**  
**INSURANCE**

A member of Westfield Group<sup>SM</sup>

Re: Middleton, Inc. / Middleton Heat & Air

To Whom It May Concern:

Please let this letter serve as a bonding reference for our valued client, Middleton Inc. dba Middleton Heat & Air who we find to be very well qualified, expertly managed, well staffed and organized.

We have expressed to Middleton our willingness to routinely consider jobs in the \$12mm single/\$25mm aggregate range. These figures are meant only as points of reference - not as limitations - and we are more than willing to consider providing bonds on any project that Middleton may seek to obtain.

Our approval of such a request would be conditioned upon applicable underwriting considerations at the time of the bond request, including – but not limited to – contract language and bond forms. We have issued this letter only as a bonding reference requested by our very good client, and this letter is not an assumption of liability.

For your further reference, MCC's surety company is Westfield Insurance Company, which is rated "A XIII" by the A.M. Best rating service. Westfield Insurance Company is a multi-line property and casualty insurance company founded in 1848 and, when combined with other companies in the Westfield Group, has a U.S. Treasury Department single project qualification of more than \$300 million.

We highly recommend Middleton Heat & Air for your next project. If you require any additional information, please do not hesitate to call me.

Sincerely,

*Gwen Bechtold*

Gwen Bechtold  
Sr. Account Manager  
Westfield Insurance Company

# Middleton Commercial Services Expertise

Middleton Heat & Air is comprised of twelve commercial operating divisions, fully integrated to provide a single point of contact for our customers—whatever their HVAC needs.

## COMMERCIAL HVAC

We successfully design, engineer, install and start-up systems on a turnkey basis on any size project on a design/build, plan/spec competitive bid or negotiated basis.

## DESIGN/BUILD

Our team of professionals offer a seamless solution for your HVAC needs. We set a guaranteed maximum price and maintain that price within the budget during the entire design/build process.

## COMMERCIAL RETROFIT/ SPECIAL PROJECTS

We are structured to handle any immediate and special HVAC needs of our clients including equipment replacement, airflow and ventilation issues or other unique sheet metal applications.

## COMMERCIAL SERVICE

This group performs all start-up and any warranty work required by our commercial customers. Our EPA-certified technicians are dispatched 24/7 providing the highest quality service in the form of repair, maintenance and operations throughout the state of Arkansas.

## COMMERCIAL CONTROLS

We design and install controls and building automation systems for our service customers, new construction projects and remodel projects. After installation we monitor the operational performance of our customers' HVAC systems.

## COMMERCIAL MAINTENANCE

The best value in our business is a must for your business! We can prolong your HVAC equipment life, reduce mechanical failure and help you save significantly on utilities. Our maintenance agreements are custom designed with respect to detail and frequency. Our preventative maintenance service is offered on a monthly, quarterly or biannual basis and scheduled at your convenience.

## COMMERCIAL FABRICATION

Our state-of-the-art machinery produces the highest quality products in the industry. We can manufacture ductwork, vent-a-hoods, transitions, curbs and other custom metal needs.

Middleton Heat and Air does the HVAC service for 29 bank locations and has done so for many very satisfied years. Along with service, Middleton has installed many of our systems in our new prototype buildings. We are very pleased with the service we receive from the installation crews as well as the maintenance team. In short, we are a happy customer.

Kathy T.  
Vice President  
Property Manager

Our history with Middleton Heat & Air is one of respect and gratitude. From the Commercial Services technicians to job foremen—all are problem solvers! Our challenges have been varied, but their work ethics, work performed, timeliness and efficiency has been apparent with every project. It's a pleasure to work with the Middleton group!

Sincerely,  
Michael H.  
HVAC&R Foreman, Hospital Facilities



► **COMMERCIAL SERVICE**

Our EPA-Certified technicians perform all start-up plus any warranty work required by our commercial customers. They are dispatched 24/7, providing the highest quality service in the form of repair, maintenance and operations throughout the state of Arkansas.

► **RETROFIT/SPECIAL PROJECTS**

We are structured to handle any immediate and special HVAC needs for our clients, including equipment replacement, airflow and ventilation issues, or other unique sheet metal applications.

► **NEW CONSTRUCTION**

We successfully design, engineer, install, and start-up systems on a turn-key basis. This applies to any size project, based on a design/build, plan/spec competitive bid or negotiated basis.

► **BUILDING CONTROLS & ENERGY MANAGEMENT**

We design, install and integrate world-class building automation control systems for retrofit, new construction, and service customers. We monitor the operational performance of our customers' HVAC systems to ensure energy efficiency while maintaining a comfortable environment.

► **MAINTENANCE PROGRAMS**

We help prolong the life of our customers' HVAC equipment, reduce mechanical failure, and enable clients to save significantly on utilities with our maintenance agreement program. Always custom designed around detail and frequency.

► **DESIGN/BUILD**

Our team of professionals offer seamless solutions for HVAC needs. We set a guaranteed maximum price and maintain that price within the budget during the entire design/build process.

► **FABRICATION**

Our state-of-the-art machinery produces the highest quality products in the industry. We can manufacture ductwork, vent-a-hoods, transitions, curbs, and other custom metal needs.



Middleton Heat & Air has been a valued partner on several projects. They are team players and provide our clients with high quality workmanship. Most importantly, they are committed to providing prompt customer service after the job is complete.

With 1.5 million sq. ft. of buildings here at North Little Rock School District, there is a lot to maintain. Middleton Heat & Air was here for every step with us, from large equipment installation to preventive maintenance. We are happy to call Middleton part of the North Little Rock team!



Our history with Middleton Heat & Air is one of respect and gratitude—from the Mechanical Services technicians, to job foreman—all are problem solvers! Our challenges have been varied, but their work ethic, work performance, timeliness and efficiency have been apparent with every project. It's a pleasure to work with the Middleton group!

**MIDDLETON**  
MECHANICAL SERVICES

**MIDDLETON**  
MECHANICAL SERVICES

800-404-0371 • P.O. Box 506 • Bryant, AR 72089  
HVAC 084059

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