



## Instructions to Proposers

The Local Government Purchasing Cooperative (Cooperative), 12007 Research Blvd., Austin, Texas 78759 is a statewide purchasing cooperative for school districts, junior colleges, cities, counties, other political subdivisions, and eligible nonprofit entities. The Cooperative was formed by the Texas Association of School Boards, Inc. (TASB), a non-profit corporation of the State of Texas, 12007 Research Blvd., Austin, Texas 78759, and includes the Texas Municipal League (TML), a Texas unincorporated not-for-profit association, 1821 Rutherford Lane, Austin, Texas 78754 and the Texas Association of Counties (TAC), a Texas not-for-profit association, 1204 San Antonio, Austin, Texas 78701 as sponsors.

The Cooperative's contracts for commodities and services will be available to the members of TASB, TML, and TAC, other local government, and nonprofit entities. TASB will be responsible for supplying the electronic commerce technology to the Cooperative to enable members' purchasing to be accomplished electronically.

**Only questions received in writing will receive a response; therefore, questions regarding this Proposal Invitation shall be addressed to:**

The Local Government Purchasing Cooperative  
Attn: Bid Administrator  
12007 Research Blvd.  
Austin, TX 78759  
Phone: 512-467-0222, ext. 7154  
Fax: 800-211-5454  
E-Mail: melonie.chisholm@tasb.org

Sealed proposals are being solicited for the merchandise, supplies, services and/or equipment as set forth in this invitation. Sealed proposals are solicited on behalf of all present and future members of the Cooperative. There may be over 1,100 public and private school districts and junior colleges, over 1000 municipalities, 254 counties, numerous other political subdivisions (i.e. river authorities, special districts, public housing authorities, etc) and nonprofits entities.

Completed sealed proposal documents for **Proposal #343-10 AWARDS, TROPHIES & PERSONAL RECOGNITION PRODUCTS** must be received by the deadline specified and mailed to The Local Government Purchasing Cooperative, 12007 Research Blvd., Austin, TX 78759 **on or before 2:30 PM March 9, 2010.** **Late proposals will not be accepted** and will be returned to the vendor unopened. Proposals must be submitted in a sealed envelope marked properly with the Proposal Invitation Number, Product Category, and Opening Date and Time.

Proposals may be withdrawn prior to the opening date and time, but only in accordance with Section 17 of the General Terms and Conditions Document entitled "Withdrawal or Modification of Proposal."

## II. General Terms and Conditions

### A. General Provisions

#### 1. Proposal Preparation and Submission Procedures

Sealed proposals will be received until the deadline indicated in the Notice of Proposal Invitation.

Each proposal must be submitted in a **SEALED** opaque envelope (or other non-transparent package or container). The outside of the proposal envelope (or other package or container) must bear the following information in clear and legible form:

- a) In the upper left-hand corner: print the full name and address of the proposing entity, and the name and telephone number, including the area code, of the person to contact with questions about the proposal submission; and
- b) In the lower left-hand corner: "SEALED PROPOSAL," the proposal name, proposal number, and submission deadline indicated on the Notice of Proposal Invitation.

Proposals may be submitted by U. S. Mail, common carrier, or other courier or delivery service, or by hand delivery. **Electronic proposals (faxed & e-mailed) will NOT be accepted.** However, The Local Government Purchasing Cooperative reserves the right to maintain all awarded vendors' contract documents in electronic format and facsimile signatures shall constitute the original. If forwarded by mail or other courier or delivery service, the **sealed** proposal envelope, identified as indicated above, should be enclosed in **another envelope** addressed as specified below. The Local Government Purchasing Cooperative hereinafter called "Cooperative" will not be responsible for proposals or related correspondence that are missent, misdelivered, or misplaced. The date/time record of the Cooperative staff will be the official time of receipt.

Proposals should be addressed and delivered to:

The Local Government Purchasing Cooperative  
Attn: Bid Administrator  
12007 Research Blvd.  
Austin, TX 78759

Proposals that are opened prior to the proposal opening because of failure to adhere to the above addressing and identification criteria will not be considered and will not be returned. Proposals received after the deadline will not be accepted for consideration, and will be returned unopened. Proposals received in an unsealed condition will not be considered and will not be returned. **Faxed proposals or related communications will not be accepted.**

A representative of the proposing entity who is authorized to enter into contracts on behalf of the proposing entity must manually sign proposals in ink. The person signing the proposal must indicate his/her title along with signature. Proposals received without proper signature will not be considered.

**Proposers must return all original documents required in the proposal response – one set only.**

Proposers should retain photocopies for their files. Any change made to any written response on any of the proposal documents must be made in ink by marking through the original entry and clearly entering the new information alongside the change. Changes must not be made with correction fluid. All changes must be "initialed" by the person making the change, and the name of the person who initialed the change must be noted in a footnote on the same page containing the correction. **Failure to return any document or information requested as part of the proposal response may result in the rejection of the entire proposal.**

Proposers or their authorized representatives are expected to fully inform themselves as to the terms, conditions, requirements and specifications of this Proposal Invitation before submitting proposals. Failure to do so will be at the proposers own risk. The law makes no allowance for errors of omission or commission on the part of proposers; furthermore, the proposers cannot secure relief on the plea of error or ignorance concerning any requirement included in the Proposal Invitation.

Vendors who do not respond to this particular proposal, but who want to remain on our mailing list for future opportunities in this product category should complete, sign, and submit the signature sheet entitled "Notice of Proposal Invitation" with "**NO PROPOSAL**" indicated on the face of the sheet.

Vendor representatives are welcome to attend the proposal opening at the date and time indicated in the Notice of Proposal Invitation, but vendor presence is not required, and no weight or other consideration toward any award decision will be given to any vendor's attendance or absence at the proposal opening. Recaps of the details of the proposals received will be available to any interested party upon WRITTEN request. The form and content of the proposal recaps will be at the sole discretion of the management and staff of the Cooperative. They may be in electronic form.

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

These General Terms and Conditions are applicable to all Proposal Invitations issued by the Cooperative, and by this inclusion, they become an integral part of any contract which is awarded, or purchase order which is issued in association with this Proposal Invitation.

## **3. General**

Throughout this document, the terms "Cooperative," "Purchasing Coop," "Coop Member," "Cooperative Member," "Participating Member," etc. are used interchangeably to mean "the collective, Cooperative association and the related activities of the management and staff of the The Local Government Purchasing Cooperative and any one or all of its participating members and their management and staff."

The section titles contained in this General Terms and Conditions document are for convenience and reference only, and in no way define, describe, extend, or limit the scope or intent of the provisions of any section of this document.

Unless otherwise stated, any listing of factors or criteria in this document does not constitute an order of preference or importance.

Unless otherwise specified, you may propose on any or all items. Answer all questions related to each item on which you wish to propose. For items you do not wish to propose on, you may simply leave the questions for that item unanswered (blank), or you may enter "No Proposal" or "N/P." Items will be considered individually and awards will be made on each item independently, except for "related" items for which "compatibility" will be an element of consideration. In such cases, small groups of items will be considered as a unit.

Proposers who do not wish to respond to this Proposal Invitation, but who would like to remain on our proposers list for this commodity category should sign and return the "Notice of Proposal Invitation" form with "NO PROPOSAL" indicated on the face of the form. Failure to adhere to this procedure may result in removal of the proposer's name from our proposer list.

Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area firms are invited to submit proposals.

The term "contract", as used in this document, means the comprehensive collection of:

- a) this General Terms and Conditions document, including any attachments and or amendments thereto,
- b) the Item Specifications included in the Proposal Invitation and any subsequent addenda thereto,
- c) the proposer's signed Notice of Proposal Invitation sheet, which must be completed, signed by an authorized representative of the proposing entity, and returned with the proposer's response, along with this ENTIRE Terms and Conditions document and all other forms and information collection pages included with this Proposal Invitation,

- d) the proposer's entire response to the Proposal Invitation,
- e) the proposer's Notice of Award document,
- f) And any additional terms, conditions, or instructions contained in each individual Purchase Order issued by any member(s) of the Cooperative.

Collectively, these documents represent the entire agreement between the parties.

#### **4. Contract Time Period**

The time period for purchases covered by any contract resulting from any award under this proposal is stated in the Notice of Proposal Invitation. Unless otherwise indicated in these General Terms and Conditions, all proposal pricing will be firm through the entire contract period.

In the event this contract expires before another proposal is awarded, upon the mutual written agreement of the parties, this contract may be extended on a month to month basis beyond the expiration of the contract time period.

The transfer, assignment, or subcontracting of contracts is prohibited, and the proposer agrees not to sell, assign, transfer, convey, or subcontract any portion of any contract resulting from this proposal invitation without the prior written consent of the Cooperative.

#### **5. Addendum**

In the event that any changes to this Proposal Invitation occur subsequent to the mailing or other delivery of the original Proposal Invitation, the changes or corrections to this Proposal Invitation will be made by addendum, and any updated information contained in any addendum will prevail over the information contained in the original Proposal Invitation or any previous addendum. Each addendum will be mailed to all entities that are known to have received a copy of this Proposal Invitation. The Cooperative is the sole authority for the issuance of any addendum related to this proposal. Any communications from any person or entity other than the Cooperative regarding any matters related to this proposal are invalid and will have no influence on this Proposal Invitation.

Each addendum must be acknowledged on the acknowledgment form provided with the addendum. Any required acknowledgment form must be submitted along with the submission of any proposal response.

#### **6. Specifications**

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

In most cases, proposals on brands of equivalent nature and quality will be considered, provided they are regularly produced products from a reputable manufacturer. However, in some cases, the Cooperative may find it advantageous to standardize equipment and/or supplies by manufacturer in order to achieve efficiencies in procurement, repair, and operation, to match existing stock, or to satisfy other requirements. In these cases, preference will be given to the specific products identified as "approved brands," especially if all other evaluation factors are deemed to be equal. For this reason, where specific brands or models are identified, it is preferable for the proposer to propose the exact item specified, in addition to an alternate brand or model where desired.

All proposals must identify the manufacturer, brand, model, etc. of the article being offered. For proposals on “or equal/equivalent” items other than any “approved brand” specified, the proposer must supply a complete description and sufficient data for the Cooperative to properly analyze the product being proposed. Samples may be requested for items other than “approved brands.”

If the proposer fails to identify the manufacturer, brand, model, etc. for any item, the Cooperative will assume the proposer is proposing on the **exact brand and model identified in the specification, and if awarded, the vendor will be required to furnish the exact brand names, models, etc. as specified. Substitutions will not be allowed.**

The apparent silence of the specifications as to any detail or the apparent omission from any specification of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices shall prevail. All interpretations of the specifications shall be made on the basis of this statement.

If you discover or suspect an error in the item specifications in this Proposal Invitation, please note it as part of your proposal response. We will attempt to correct errors for future Proposal Invitations.

## **7. Proposal Evaluation and Award**

All proposals received in response to this Proposal Invitation which are submitted in accordance with the instructions and restrictions contained in section #1 of this General Terms and Conditions document entitled “Proposal Preparation and Submission Procedures” will initially be considered for award; however, initial consideration of any proposal will not constitute an assessment of its meeting the necessary qualifications, and any proposal may be disqualified at any time during the process of evaluating proposals for failure to meet any other terms or conditions contained anywhere else in the Proposal Invitation.

The Cooperative reserves the right to waive any or all irregularities, formalities, or other technicalities, to be the sole and independent judge of quality and suitability of any products offered, and may accept or reject any proposal in its entirety, or may reject any part of any proposal without affecting the remainder of that proposal, and may award the individual items on this proposal in any combination or in any way to best serve the interests of its members as it perceives those interests to be in its sole discretion. In evaluating the proposals received and determining the best value for all Cooperative members, the Cooperative shall consider the following criteria:

- the purchase price;
- the reputation of the vendor and of the vendor’s goods and/or services;
- the quality of the vendor’s goods and/or services;
- the extent to which the goods and/or services meet the needs of the members of the Cooperative;
- the vendor’s past performance or relationship with the members of the Cooperative;
- the impact on the ability of the members of the Cooperative to comply with any applicable laws or rules, including those relating to the utilization of historically underutilized businesses;
- the total long-term cost to the Cooperative members to acquire the vendor’s goods and/or services;
- any other relevant factor that a public entity can consider in selecting a vendor, which may include, but are not limited to, any of the following:
  - the vendor’s location, service and delivery capabilities with preference given to a vendor who can serve a larger geographic area if the price difference does not exceed 5%;
  - the warranties offered and the vendors warranty service history the probability of continuous availability of the goods and/or services offered;
  - packaging of the product and in some cases preference is given to a vendor who provides all the components relative to the complete package.

The Cooperative authorizes competitive and indefinite quantity awards to those proposers who give the same or better discounts/pricing than they give their best governmental clients. All proposals are evaluated on their own merit and are determined to be fair and reasonable by comparing the price/discounts that the

proposer offers other governmental clients. Discount practices are examined and evaluated based on historical data, sales information and other market research techniques.

The Cooperative has the right to award to multiple companies supplying comparable products or items, also known as a multiple award schedule, but reserves the right to make a single award if determined to be in the best interest of the members.

Once a proposal is awarded, a vendor must generate a minimum of \$15,000 annually or may not be offered a contract extension. Evaluations will be made on an annual basis on the renewal date of the contract and the Cooperative reserves the right to discontinue the vendor's contract at that time based on factors that may include, but are not limited to, the annual amount of business, performance, and the best interest of the Cooperative members.

It is understood that the Cooperative, through its management and/or its members, may use all means at their collective disposal to evaluate the proposals received on these criteria, and the final decision as to the best overall offer, both as to price and to suitability of the products and/or services offered to fit the needs of the members of the Cooperative, will rest solely with the Board of Trustees of the Cooperative. A Protest Procedure is available at the request of interested vendors.

Unless otherwise indicated in this proposal invitation, "all or nothing" proposals are **not** acceptable and will be rejected. The proposer must be willing to accept a partial award for any combination of the items and/or services proposed, and must be willing to share the business with any other successful proposers.

The successful proposer(s) will be notified by "Notice(s) of Award" issued by the management of the Cooperative.

The Cooperative and/or its members, as a whole or individually, reserve the right to require a performance bond as it is deemed necessary.

## **B. Performance**

### **8. Quantities**

Quantities reflected in this Proposal Invitation are estimates based upon the combined projected needs for Cooperative members during the contract period. Quantities are the best estimate of anticipated needs available at the time of publication of this Proposal Invitation, but the accuracy of these estimated quantities may be affected by numerous factors including, but not limited to, budgetary adjustments, student participation, availability of government commodities or other subsidies, changing market forces, unintentional errors or omissions, and changes in Cooperative participation. Actual needs may be greater or less than the estimated quantities provided.

Unless otherwise specified by the proposer, the Cooperative as a whole, and its individual members, will be allowed to purchase up to twenty-five percent (25%) more or up to twenty-five percent (25%) less than the estimated quantities for any item and still obtain the item at the proposal price.

Vendors will be notified of significant changes in the estimated quantities, as they become known throughout the contract period.

Successful proposer will be required to monitor consumption rates and bring any exceptions to the attention of the Cooperative management as soon as possible. The Cooperative will communicate slow-moving items to its members if notified by the vendor. Except for conditions discussed within section #23 of this document entitled "Force Majeure," vendors are required to maintain sufficient inventories to cover the needs of Cooperative members with only minimal, occasional, and temporary inability to provide products on a timely basis. Vendors at the close of the contract period agree not to hold the Cooperative liable for any inaccuracies in estimated quantities or for any products on hand.

## **9. Packaging**

Unless otherwise provided for in this Proposal Invitation, all products supplied under any contract resulting from this Proposal Invitation must be packaged in containers that are new, appropriately designed for the products involved, and sturdy enough to protect the products involved in loading, transit, unloading, and storage. Any products supplied under any contract resulting from this Proposal Invitation for which palletizing is appropriate must be delivered on standard 48" 4-way pallets in good, serviceable condition.

## **10. Pricing**

All "Line Item" Proposals must be for a specific price for the unit of measure specified for that item. The proposer is responsible for clearly noting any differences in proposed packaging and/or units of measure in the proposal response, and the proposer shall understand that if the item in question is awarded to the proposer, the quantity specified for that item will be adjusted to achieve an approximately equivalent amount of the product.

In cases where another price is requested for comparison purposes (e.g., "portion price" or "price per ounce"), such price is for comparison purposes only. Purchases will be made in increments of the unit of measure specified. In the case of any discrepancy or error in comparison price calculations, the price for the unit of measure specified will prevail. Excessive errors in comparison price calculations will be sufficient grounds for rejection of the entire proposal.

"Discount from Catalog" Proposal Invitations require a single discount percentage to be applied to all items in the proposer's published catalog, which must be supplied with the proposal response. For proposal to be considered, the catalog or published pricelist must be submitted with proposal response.

If during the term of the contract, there are manufacturer price increases, those increases may be submitted to the Cooperative and the Cooperative will make the determination if they can be passed on to the Cooperative members.

"Cost Plus" proposals will not be accepted unless otherwise requested in this Proposal Invitation.

Proposal prices must be firm for acceptance for at least 90 days from proposal opening date, unless otherwise specified in this Proposal Invitation or in the proposer's response.

Awarded proposals will not be active on the Buyboard until price sheets or catalogs are submitted in the proper format to be posted to the Buyboard.

If during the term of the contract, a successful proposer's net prices to any or all of its other customers in similar market circumstances for any of the same items awarded under this Proposal Invitation are reduced below the contracted price, it is understood and agreed that the benefits of such price reduction shall be extended to all participants of the Cooperative.

For proposals to be considered from vendors with a current Cooperative contract award for the same or similar commodity or products the submitted pricing must be equal to or better than what was awarded under the expiring contract. Pricing that is not considered equal or better could result in the vendor's proposal being determined non-competitive and not considered for award.

During the term of the award, members may use the electronic feature in the BuyBoard, the RFQ feature, to obtain volume pricing based on products that have been awarded in the contract.

## **11. Sales Tax**

The local government members of the Cooperative are public jurisdictions that are exempt from sales, excise, and use taxes. Each Cooperative member upon individual requests will provide Tax Exemption Certificates to the vendor. Unless otherwise specified in this Proposal Invitation, sales tax will not be

included in any proposal response or invoice submitted by any vendor unless the vendor has requested a Tax Exemption Certificate from the individual Cooperative member in writing and failed to receive the same within a reasonable period of time. The Limited Sales, Excise, and Use Tax Laws recognize the inclusion of tax exemption information as part of a purchase order document to be as binding as if it had been submitted separately, and by responding to this Proposal Invitation, the proposer agrees to accept tax exemption information in such form.

Some of the nonprofit members may not be exempt from sales, excise and use taxes. If applicable, the purchase order received by the vendor will reflect the tax. Responsibility for the billing, collection and remitting of sales, excise and use taxes due from nonprofit Cooperative members, if any, in compliance with law, shall lie with the vendor.

## **12. Delivery and Transportation**

Unless otherwise noted in these General Terms and Conditions or the Purchase Order, or unless prior approval has been obtained from the Cooperative member placing the order, all deliveries shall be made between the hours of 8:00 A.M. through 11:30 A.M. and 1:30 P.M. through 3:30 P.M. (4:30 P.M. for members other than school districts), Monday through Friday, holidays excepted.

Unless otherwise noted in this Proposal Invitation or in the Purchase Order, the proposer must deliver products awarded under this Proposal Invitation within ten (10) working days after receipt of a Purchase Order. The vendor must immediately notify the primary contact person at the Cooperative member placing the order, by telephone and/or fax, if any delays occur. The Cooperative member placing the order will have the option to cancel the order if it is unable to accept the delay. At the discretion of the Cooperative member placing the order, items received after the due date, for which the Cooperative member has not been notified regarding the delay, may be returned at the vendor's expense with no penalty to the Cooperative member.

Repeated failure to meet delivery dates will constitute a breach of contract by the vendor, and may result in the initiation of actions covered in section #22 of this General Terms and Conditions document entitled "Remedies for Non-Performance of Contract, and Contract Termination" and the associated financial impacts attached thereto, as well as jeopardize any future business from the Cooperative.

All freight, delivery, and handling charges are the responsibility of the proposer, and all proposal prices must be quoted freight prepaid, F.O.B. destination, and shall include all freight, delivery, and handling charges, including unloading and inside deliveries where required.

Cartons must be marked as indicated on the Purchase Order. Each shipment must include a packing list and waybill or delivery ticket.

If the vendor is delivering products out of more than one warehouse or distribution center, all warehouses or distribution centers involved in the distribution plan **MUST** carry or have timely access to all awarded items and **MUST** be able to respond to orders in a timely manner. Unless otherwise specified in this Proposal Invitation, product substitutions are not allowed, and the involvement of multiple distribution centers will not be construed as to alter the restrictions against product substitutions. In the event the vendor uses multiple distribution centers, the Cooperative and its members will have **ONE CONTACT PERSON** for overall contract management relative to any contract resulting from any award under this Proposal Invitation, and the Cooperative and its members **WILL NOT** be required to deal with multiple vendor contacts for overall contract management.

When the needs of the Cooperative member require immediate response, the right to pick up products awarded under this Proposal Invitation on an "over the counter" basis must be available for the majority of the items awarded to a proposer. Under such circumstances, the Cooperative member's personnel may pick up products at the vendor's warehouse location at the proposal price with no minimum purchase required.

Except for items that have hidden defects or that do not meet specifications, title to all products shall pass to the Cooperative member upon receipt and acceptance at the time of delivery.

### **13. Quality**

Unless otherwise indicated in the Proposal Invitation, all items proposed must be new and in first class condition and must conform to the highest standards of manufacturing practice, including containers suitable for shipment and storage. Unless otherwise requested, the Cooperative will not accept “factory seconds” or otherwise inferior goods, and reserves the right to return any such item(s) within thirty (30) days of receipt at vendor’s expense.

All electrical items must meet all applicable OSHA standards and regulations, and must bear the appropriate listing from US, FMRC, NEMA, or UL Laboratories.

Material Safety Data Sheets (MSDS) on chemicals or any other products customarily requiring MSDS Sheets must be provided for each ordering Cooperative member. MSDS Sheets must be delivered along with the first shipment to each individual Cooperative member within the contract period. Promptly and at no additional costs the proposer will provide additional Materials Safety Data Sheets to Cooperative members.

### **14. Product Inspection, Testing, and Defective Items**

All products supplied under this contract should arrive in the best possible condition and will be subject to inspection, testing, and approval by the Cooperative and/or its members. Tests may be performed on any samples submitted as part of the proposal or evaluation process, or on samples taken from any regular shipment. In the event any product tested fails to meet or exceed all requirements of the proposal item specifications or the General Terms and Conditions of the Proposal Invitation, the cost of the samples used and the cost of the testing shall be borne by the supplier, and upon notification to the vendor, the defective product(s) will be picked up and replaced by the vendor within five (5) business days or on the next service date, whichever is sooner, without charge for the replacement(s) or delivery. The Cooperative member without expense to the Cooperative or its member as outlined above may dispose of defective products that are not picked up and replaced by the vendor. Repeated incidents of delivery of products that fail to pass product inspection and/or testing by a vendor will warrant cancellation of the contract in addition to the remedies outlined above. Furthermore, future business from the Cooperative could be jeopardized.

Products damaged in shipment will be considered as defective products and will be subject to the same remedies outlined above.

The failure of any consumable products (food items) to meet specifications or acceptable chemical or bacterial levels may result in cancellation of the contract in addition to the remedies outlined above. Furthermore, future business from the Cooperative could be jeopardized. All products in the Cooperative member’s warehouse at the time of any such cancellation must be picked up and credit issued to the Cooperative member.

Latent defects discovered after delivery and acceptance of any products may result in revocation of the acceptance.

The management and staff of the Cooperative shall have access to any supplier’s place of business during normal business hours for the purpose of inspecting merchandise.

### **15. Samples**

If samples are needed for proposal evaluation, they will be requested as part of the Proposal Invitation or in a separate communication. Unless otherwise indicated in the request for the samples, the samples must be received within 72 hours from the time of the request.

Samples must be furnished free of expense to the Cooperative. Samples must be labeled with the Cooperative Proposal Name and Number, Item Number, Product Identification Number(s), and the name of

the proposing entity. Do not include samples with the proposal response unless otherwise instructed in the Proposal Invitation.

All samples will be retained by the Cooperative for a sufficient length of time for proper evaluation. If not destroyed or consumed during examination or testing, samples will be returned to the proposer at the proposer's expense, but only upon written request submitted with the samples at the time the samples were submitted. However, notwithstanding the above, samples from the successful proposer may be retained permanently by the Cooperative for the purpose of determining that the quality and workmanship of the delivered items are comparable to the samples. The Cooperative shall incur no liability for any samples that are damaged, destroyed or consumed during examination or testing.

Failure by any proposer to submit samples when requested will result in the items in question not being considered for award to that proposer.

## **16. Warranties**

By submission of a proposal, the proposer warrants that the proposer is an authorized dealer, distributor, or manufacturer for the product(s) being offered, that all items being proposed conform to the specifications for which the items are being offered, and that all items supplied under any contract related to this proposal invitation will be free from all defects in material, workmanship, and title.

A minimum of 90-days product guarantee or the manufacturer's standard commercial warranty, whichever is greater, shall apply to all products purchased under this Proposal Invitation. This warranty shall provide for replacement of defective merchandise, parts, and labor, and shall include pick-up of the defective merchandise from the specified Cooperative member's location and delivery of the replacement(s) to the same location. The warranty shall be effective from the date of acceptance of the merchandise.

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

Subject to the restrictions discussed below, the Cooperative will consider a WRITTEN request from any proposer that the proposer be allowed to withdraw any proposal submitted, but ONLY IN ITS ENTIRETY, and ONLY UNTIL THE DUE DATE AND TIME FOR PROPOSAL SUBMISSION as stated in the Notice of Invitation to Proposal included with this Proposal Invitation. A representative of the proposing entity who is authorized to enter into contracts on behalf of the proposing entity must manually sign any request for the withdrawal of any proposal in ink, and the person signing the request must indicate his/her title along with his/her signature. No proposal may be withdrawn after the date and time that proposals are due as specified in the Notice of Proposal Invitation. Only proposals that have been submitted consistent with the instructions relating to packaging and labeling of the proposal will be considered for withdrawal. If there is any question in the mind of the management or staff of the Cooperative regarding the identity of the proposal or the identity of the proposer relating to any request for the withdrawal of any proposal, the Cooperative will refuse to allow the withdrawal of the proposal. Withdrawal of any proposal allowed by the Cooperative will require the completion and signature of a written receipt by the proposer's representative satisfactory to the management or staff of the Cooperative before the proposal will be released. The decision of the management or staff of the Cooperative relating to any matters concerning proposal withdrawal will be final.

If a proposer requests to withdraw a proposal and the Cooperative allows the withdrawal of the proposal, the proposer may resubmit the proposal, or submit a new proposal, up until the due date and time for proposal submission as stated in the Notice of Invitation to Proposal included with this proposal invitation, provided any new submission meets all the qualifications of proposal submission included in these General Terms and Conditions.

If a proposer resubmits a proposal that was withdrawn and makes changes to any document in the proposal package, an authorized agent of the proposer must initial all alterations made to any proposal document.

All proposals in the possession of the Cooperative at the time proposals are due shall be deemed final, conclusive, and irrevocable, and no proposal shall be subject to withdrawal, amendment, or correction after

the due date and time for proposal submission as stated in the Notice of Invitation to Proposal included with this proposal invitation.

## **18. Substitutions**

The Cooperative will not accept any substitutes after item(s) have been awarded as specified, unless such substitutions are deemed to be in the best interest of the members of the Cooperative, and unless prior agreements have been reached and reduced to writing regarding such substitutions. Substituting without the prior approval of the Cooperative member placing the order will constitute a breach of contract by the vendor which may result in the initiation of actions covered in section #22 of this General Terms and Conditions document entitled “Remedies for Non-Performance of Contract, and Contract Termination” and the associated financial impacts attached thereto, and may jeopardize any future business from the Cooperative.

## **19. Deviations from Item Specification or General Terms and Conditions**

Any and all limitations, exceptions, qualifications, special conditions, or deviations from these General Terms and Conditions or any of the item specifications, including the offering of any alternate to the “approved brand and/or model” (where identified) must be clearly noted in detail by the proposer at the time of submission of the proposal. The absence of such limitations, exceptions, qualifications, special conditions, or deviations being submitted in writing with the proposer's response will hold the proposer accountable to the Cooperative and its members to perform in strict accordance with all these General Terms and Conditions and all the item specifications as written, including any “approved brands and/or models” identified. The proposer should be aware that the submission of any such limitations, exceptions, qualifications, special conditions, or deviations with the proposal response may place the proposer at a competitive disadvantage or otherwise prevent the Cooperative from considering the proposal on the affected item(s).

Any deviation from any of the item specifications, including the delivery of any product other than the specific brand and model of the product awarded, will be grounds for rejection of the product(s) when delivered, and will expose the vendor to the remedies identified in section #22 of this General Terms and Conditions document entitled “Remedies for Non-Performance of Contract, and Contract Termination” and may jeopardize future business from the Cooperative.

## **20. Contracts and Purchase Orders**

A response to this Proposal Invitation is an offer to contract with the Cooperative and its members based upon the Item Specifications and the General Terms and Conditions contained in the Proposal Invitation. Proposals do not become contracts unless and until they are both accepted by the Cooperative through an Award Notice to the Proposer, and put into effect by the issuance of a Purchase Order(s) signed by an authorized representative of a participating member of the Cooperative. All purchase orders must be processed through the Cooperative. Receipt of a purchase order directly from a Cooperative member generated from any contract awarded under this Proposal Invitation may be treated as a material breach of contract, whereupon the Cooperative may terminate the vendors contract for cause as provided by section #22 of this General Terms and Conditions document entitled, “Remedies for Non-performance of a Contract, and Contract Termination. All deliveries and financial transactions will occur directly between the vendor and the members of the Cooperative.

This contract shall collectively include:

- the General Terms and Conditions and the Item Specifications included in the Proposal Invitation and any subsequent addenda thereto,
- the proposer's signed Notice of Proposal Invitation sheet and any other data collection sheets included with the Proposal Invitation,
- the proposer's entire response to the Proposal Invitation,

- the proposer’s Notice of Award document,
- and any additional terms, conditions, or instructions contained in each individual Purchase Order. The contract shall be interpreted by and governed under the laws of the State of Texas.

The Cooperative reserves the right to maintain all awarded vendors’ contract documents in electronic format for the duration of the contract period. Facsimile signatures shall constitute the original.

## **21. Invoices, Packing Lists, and Payment**

Packing Lists or other suitable shipping documents must accompany each shipment and must identify (a) the name and address of the vendor, (b) the name and address or delivery location of the receiving entity, (c) the Purchase Order Number, and (d) detailed descriptive information identifying the item(s) delivered, including quantity, item number, product code, item description, number of containers, etc.

All Invoices must reflect (a) the name and address of the vendor, (b) the name and address or delivery location of the receiving entity, (c) the appropriate Purchase Order Number, and (d) detailed descriptive information identifying the item(s) delivered, including quantity, item number, product code, item description, etc., and must include a properly signed copy of the delivery receipt. Invoices must be mailed directly to the ordering member of the Cooperative.

The members of the Cooperative will not be held responsible for any products delivered or invoiced without a valid current Purchase Order Number.

The Cooperative cannot control the payment terms adopted and/or followed by its individual members; however, the Cooperative does attempt to remind its members about the importance of following prompt payment policies when dealing with its vendors. Notwithstanding the above, the payment terms stated on each individual Purchase Order will be the controlling factor in the determination of payment terms. Each Invoice should include the vendor’s normal payment terms in the event that any Purchase Order fails to address the subject.

In any case, payment will be made only after satisfactory delivery and acceptance of merchandise in good order, including the necessary documentation indicated above, and only after receipt of a correct Invoice from the vendor, including the necessary information indicated above.

At the option of the Cooperative member, invoices with incorrect prices or other errors or inconsistencies will not be paid until corrected, whether by credit memo(s) or issuance of a corrected invoice. At the option of the Cooperative member, invoices may be corrected upon receipt and payment may be made based upon their corrections.

## **22. Remedies for Non-Performance of Contract, and Termination of Contract**

If the vendor cannot comply with the terms and conditions in fulfilling its contract as anticipated, the vendor must supply the same products or services contracted from other sources at the contract price. The vendor’s delay in the above will constitute the vendor’s material breach of contract, whereupon the Cooperative may terminate the vendor’s contract for cause as provided by the remainder of this section.

Unless this contract is extended by mutual agreement of the parties on a month to month basis beyond the expiration of the contract time period as stated in the Notice of Invitation to Proposal, this contract shall terminate upon the expiration of the contract term as stated in the Notice of Invitation to Proposal.

If any delay or failure of performance is caused by a Force Majeure event as described in section #23 of this General Terms and Conditions document entitled “Force Majeure,” the Cooperative may, in its sole discretion, terminate this contract in whole or part, provided such termination follows the remaining requirements of this section.

Except as otherwise provided for within the General Terms and Conditions of this document, this contract may be terminated in whole or in part by either party in the event of substantial failure by the other party to fulfill its obligations under this contract through no fault of the terminating party; provided that no such termination may be implemented unless and until the other party is given (1) at least ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party, followed by a reasonable opportunity, of not more than ten (10) working days, to rectify the defects in products or performance, prior to termination.

Valid causes for termination of this contract will include, but are not limited to:

- a) the vendor's failure to adhere to any of the provisions of the General Terms and Conditions of this Proposal Invitation,
- b) the vendor delivering any product(s) that fails to meet the Item Specifications included in this Proposal Invitation relating to the awarded product(s)
- c) the vendor delivering any substitution(s) of product(s) different than those originally proposed and awarded without the prior written approval of the member of the Cooperative placing the order,
- d) the vendor's failure to meet the required delivery schedules as identified in the contract documents, or
- e) The vendor's violation of any other provision contained within these General Terms and Conditions or any attachment thereto which provides for contract termination as a remedy.

Notwithstanding anything contained in this section, in the event of the vendor's breach of any provision in this contract, the Cooperative reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of its members, including, but not limited to, the purchase of other products of like type and quality from other sources in the open market. In the event the Cooperative elects to purchase other products from other sources, the Cooperative will invoice the vendor for any increased costs to the Cooperative member, and the vendor agrees, by submission of a proposal response, to promptly pay any such charges invoiced.

In the event the Cooperative terminates this contract, in whole or in part, for any reason provided for within the contract, the Cooperative reserves the right to award the canceled contract, or any portion thereof, to the next lowest or best proposer as it deems such award to be in the best interest of its members.

Any contract termination resulting from any cause other than a Force Majeure event will be deemed valid reason for not considering any future proposals from the defaulting vendor.

In the performance of this contract, time is of the essence and these General Terms and Conditions are of the essence.

## **23. Force Majeure**

The term Force Majeure shall include, but is not limited to, governmental restraints or decrees, provided they affect all companies in the vendor's industry equally and are not actions taken solely against the vendor; acts of God (except natural phenomena, such as rain, wind or flood, which are normally expected in the locale in which performance is to take place); work stoppages due to labor disputes or strikes; fires; explosions; epidemics; riots; war; rebellion; or sabotage.

The parties to this contract will be required to use due caution and preventive measures to protect against the effects of Force Majeure, and the burden of proving that Force Majeure has occurred shall rest on the party seeking relief under this section. The party seeking relief due to Force Majeure will be required to promptly notify the other party in writing, citing the details of the Force Majeure event, and will be required to use due diligence to overcome obstacles to performance created by the Force Majeure event, and shall resume performance immediately after the obstacles have been removed, provided the contract has not been terminated in the interim.

Delay or failure of performance, by either party to this contract, caused solely by a Force Majeure event shall be excused for the period of delay caused solely by the Force Majeure event, provided the affected

party has promptly notified the other party in writing. Neither party shall have any claim for damages against the other resulting from delays caused solely by Force Majeure.

Neither the Cooperative nor its members will be responsible for any costs incurred by the vendor because of the Force Majeure event unless the Cooperative or its member has requested, in writing, that the vendor incur such costs in connection with any delay or work stoppage caused by the Force Majeure event, and the Cooperative has agreed in such writing to incur such additional costs.

Notwithstanding any other provision of this section, in the event the vendor's performance of its obligations under this contract is delayed or stopped by a Force Majeure event, the Cooperative shall have the option to terminate this contract in accordance with section #22 of this General Terms and Conditions document entitled "Remedies for Non-Performance of Contract, and Contract Termination." Furthermore, this section shall not be interpreted as to limit or otherwise modify any of the Cooperative's rights as provided elsewhere in this contract.

## **24. Non-Collusion Certification**

By signing this proposal, the proposer certifies that, to the best of his/her knowledge:

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

The person signing this proposal certifies that he/she has fully informed himself/herself regarding the accuracy of the statements contained in this certification.

## **25. Assignment - Delegation**

No responsibility or obligation created by this contract shall be assigned or delegated by the vendor without written permission from the Cooperative. Any attempted assignment or delegation by the vendor shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

During the course of a contract period if a vendor goes out of business or terminates their business relationship with the manufacturer for the product for which they were awarded, the Buyboard will be authorized to place the manufacturer on the Buyboard for the duration of the contract period.

## **26. Certifications Regarding Legal, Ethical, and Other Matters**

By signing this proposal, the proposer certifies that:

- a) he/she has read and understands all the General Terms and Conditions in this document, and agrees to be bound by them, and is authorized to submit proposals on behalf of proposer,
- b) the proposer has noted any and all relationships that might be conflicts of interest and included such information with his/her proposal response,
- c) the proposal submitted conforms with all item specifications, these General Terms and Conditions, and any other instructions, requirements, or schedules outlined or included in this Proposal Invitation,
- d) if this proposal is accepted, in whole or in part, the proposing entity will furnish any item(s) awarded to them under this Proposal Invitation to the Cooperative members at the price proposal, and in accordance with the item specifications and the terms and conditions contained in this Proposal Invitation,
- e) the proposing entity has, or has the ability to obtain, such financial and other resources, including inventories, as may be required to fulfill all the responsibilities associated with this proposal,
- f) the proposing entity has a high degree of integrity and business ethics, and a satisfactory record of performances, and has not been notified by any local, state, or federal agency with competent jurisdiction that its standing in any matters whatsoever would preclude it from participating in this proposal, it would in no other way whatsoever be disqualified to proposal or receive any award or contract related to this proposal, and the proposer will comply with any reasonable request from the Cooperative to supply any information sufficient to substantiate the proposing entity's ability to meet these minimum standards,
- g) concerning paragraph "f)" above, the proposing entity has identified and disclosed in this written proposal response any and all known or suspected matters that would disqualify it from participating in this proposal or receiving any award or contract related to this proposal, recognizing that the proposer's failure to identify and disclose any such matters constitutes its affirmation that no such matters exist, and that failure to disclose in this proposal response any such matters which do exist is a material breach of contract which will void the submitted proposal or any resulting contracts, and subject the proposer to removal from all proposal lists, and possible criminal prosecution,
- h) the proposing entity has obtained, and will continue to maintain during the entire term of this contract, all permits, approvals, or licenses, necessary for lawful performance of its obligations under this contract,
- i) the prices, prompt payment discount terms, delivery terms, distribution allowances, and the quality and/or performance of the products offered in the proposal response are and will remain the same or better than those offered to the vendor's most favored customer under equivalent circumstances,
- j) The proposing entity will comply with all laws relating to intellectual property, will not infringe on any third party's intellectual property rights, and will indemnify, defend, and hold the Cooperative and its members harmless against any claims for infringement of any copyrights, patents, or other infringements related to its activities under this contract,
- k) the proposal submitted complies with all federal, state, and local laws concerning these types of products or services, and the proposing entity will continue to comply with any applicable federal, state, and local laws related to the proposing entity's activities in connection with this contract,
- l) the proposing entity will maintain, at the proposing entity's expense, any insurance necessary to protect the Cooperative and its members from all claims for bodily injury, death, or property damage that might arise from the performance by the proposing entity or the proposing entity's employees or its agents of any service required of the proposing entity under this contract; however, the existence of such insurance will not relieve the proposing entity of full responsibility and liability for damages, injury, death, or loss as described or as otherwise provided for by law,
- m) neither the Cooperative nor any of its members shall be liable to the proposer for any damages (including, but not limited to, loss of profits or loss of business, or any special, consequential, exemplary, or incidental damages) in the event that the Cooperative declares the proposer in default,
- n) He/she understands that signing the proposal with any false statement is a material breach of contract which will void the submitted proposal or any resulting contracts, and subject the proposer to removal from all proposal lists, and possible criminal prosecution.

Unless otherwise provided for in this Proposal Invitation, any written notice or other communication required by this proposal or by law will be conclusively deemed to have been given and received on the second business day after such written notice has been deposited in the U. S. Mail, properly addressed, and

with sufficient postage affixed thereto, provided such notice shall not prevent the giving of actual notice in any other manner.

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

By submission of a proposal, the proposer agrees that in the performance of any contract resulting from any award under this proposal, the proposing entity will comply with all applicable equal employment opportunity laws and regulations, including, but not limited to an agreement not to deny any benefit to, exclude from any opportunity, or discriminate in any way against, any applicant, employee, or any other person because of age, color, creed, gender, handicapping condition, marital status, national origin, political affiliation or belief, race, religion, or veteran status.

Proposer further agrees that the proposing entity is and, during the period of any contract resulting from any award under this Proposal Invitation will remain, in compliance with Executive Order 11246, entitled "Equal Employment Opportunity" as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41CFR Part 60).

The occurrence of any prohibited discrimination will constitute vendor's breach of contract due to a substantial failure by the vendor to fulfill its obligations, whereupon the Cooperative may terminate the vendor's contract for cause as provided by section #22 of this General Terms and Conditions document entitled "Remedies for Non-Performance of Contract, and Contract Termination."

## **28. Venue**

This agreement will be construed and governed according to the laws of the State of Texas. Both parties agree that venue for any litigation arising from this contract shall lie in Austin, Travis County, Texas.

## **29. Electronic Purchasing and Service Fee**

The contracts awarded under this Proposal Invitation will be posted as online electronic catalog(s) on an Internet-based electronic purchasing system maintained by TASB, on behalf of and for the benefit of the Cooperative and its members. All purchase orders generated from any contract awarded under this Proposal Invitation must be processed through the Cooperative. Receipt of a purchase order directly from a Cooperative member may be treated as a material breach of contract, subject to Section #22 of this General Terms and Conditions document entitled, "Remedies for Non-performance of a Contract, and Contract Termination".

The electronic system maintained by TASB will generate and transmit purchase orders electronically to the vendor.

By submission of a response to this Proposal Invitation, the proposer acknowledges that any use of software, access to the Internet and/or secured Value Added Network (VAN) may cause the proposer to incur certain costs or fees imposed by the supplier of such software, Internet service or secured VAN, and proposer agrees to pay any such costs or fees. By submission of a response to this Proposal Invitation, the proposer further agrees that during the entire term of any contract awarded to the proposer under this Proposal Invitation, the proposer will maintain the necessary computer and telephone hardware, necessary to provide for electronic receipt of orders.

By submission of a response to this Proposal Invitation, the proposer agrees to pay a service fee in the amount of **2% of the dollar amount of purchase orders generated** from any contract awarded to the proposer under this Proposal Invitation. The proposer further agrees to remit the service fee to the Cooperative in Austin, Texas, promptly upon receipt of each invoice therefor. The proposer also authorizes the Cooperative, to obtain copies of all purchase orders generated from the proposer's contract(s) for the purpose of billing and collecting the service fee, and for compiling required purchasing history. The

proposer further agrees that the Cooperative shall have the right, upon reasonable written notice, to review the proposer's records pertaining to purchases under any awarded contract to verify the accuracy of service fees charged to the proposer.

For "discount from catalog" proposals or other proposals based on industry or other "benchmark" pricing lists or tables, it will be the responsibility of the successful proposer(s) to provide the Cooperative with a complete, updated catalog and/or price list for all items awarded within five (5) working days of receipt of a Notification of Award. Subsequent additions, deletions, or changes in product specifications may be submitted to the Cooperative when they become available.

Vendors are strongly encouraged to submit their electronic catalog with proposal response. If it is not submitted with the proposal response, awarded vendors will have 60 days to submit the electronic catalog. If the electronic data is not provided within 60 days of notice of award, we reserve the right to inactivate any company's award information from the Buyboard until such time the electronic data is received.

The failure of any successful proposer to comply with the above electronic requirements, or the failure of any vendor to remit any service fee(s) in a timely manner, will be grounds for immediate cancellation of its awarded contract in accordance with the terms of section #22 of this General Terms and Conditions document entitled "Remedies for Non-Performance of Contract, and Contract Termination."

TASB DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO THE AVAILABILITY, ACCURACY, OR CONTENT OF ANY INFORMATION, PRODUCT, OR SERVICE FURNISHED UNDER THIS CONTRACT, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Vendor agrees that in regard to any and all causes of action arising out of or relating to vendor's participation in the Internet-based electronic purchasing system, TASB shall not be liable to vendor under any circumstances for any lost revenues, data, or profits or for any indirect, special, incidental, consequential or exemplary damages, even if it has been advised of the possibility of such damages. In no event shall TASB's liability to vendor exceed the greater of the amount of any service fee paid by vendor in excess of the amount it should have paid hereunder or \$100. The foregoing constitutes TASB's sole and exclusive liability to vendor with respect to this contract and vendor's participation in the Internet-based electronic purchasing system.

### **31. Waiver**

No claims or rights arising out of a breach of this contract can be discharged in whole or part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

### **32. Interpretation – Parol Evidence**

This writing is intended by the parties as a final expression of their agreement and a complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties and no usage of the trade shall be relevant to supplement or explain any terms used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Texas Business & Commerce Code is used in this agreement, the definition contained in the Code shall be controlling.

### **33. Right to Assurance**

Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of his intent to perform. In the event that a

demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

### **34. Extension /Non-Appropriations Clause**

Unless otherwise noted, this contract maybe renewed for (2) two additional one year terms if the vendor and the cooperative mutually agree and no increases in costs are incurred except for the growth of each participating member. Non-appropriations for renewal of contract will also be in accordance with the Local Government Code 271.005 (b) concerning non-appropriation clauses for multi-year contracts. Each participating local government member reserves the right to rescind the contract at the end of the fiscal year if it is determined that funding is not available to extend the contract.

### **35. Proposal Acceptance**

The period for acceptance of this proposal will be ninety (90) calendar days unless a different period is indicated by the proposer.

### **36. Piggyback Contract/Other Entity Clause**

It is the intent of this solicitation that other governmental organizations and agencies throughout the continental United States may purchase identical items at the same unit pricing and the same general terms and conditions, subject to the applicable state laws. Freight/shipping charges are included in the proposal prices for Texas cooperative members. Additional freight/shipping charges that may be required by other organizations and agencies are outside the scope of the base proposal. The Cooperative authorizes each governmental entity to make payment directly to the successful proposer. Please indicate your selections of states on the State Service Designation form. Additional states can be added during the term of the contract upon execution of a new State Service Designation form.

### **37. Other Information**

The scope of service in this RFP does not include services that are required to be procured under the Professional Services Procurement Act (Chapter 2254 of the Texas Government Code).

Individual School District Members of the Cooperative may in certain circumstances request background checks on vendor employees who will have direct contact with students, and the Member may require the vendor to pay the cost of obtaining criminal history record information.