

Overview and Recommended Processes for Use of TIPS 220904 Retail Electric Power Contract

TIPS recognized a need for our Members to purchase electricity power utilizing a cooperative contract, and to meet that need, has awarded a Retail Electricity Provider Agreement to entities in compliance with Texas Education Code 44.031. The agreements are available for use by TIPS Members that are located in the deregulated area of Texas' ERCOT electricity grid.

Please note that a public entity or qualifying non-profit has not made a proper legal procurement through TIPS for compliance, public procurement, or audit purposes until the public entity or qualifying non-profit has received the contract-specific TIPS Retail Electricity Contract Confirmation for their procurement file. The TIPS Retail Electricity Contract Confirmation will be issued promptly upon TIPS' receipt and approval of the Retail Electricity Provider's (REP's) required delivery of the executed, standardized TIPS Retail Electricity Contract and the required TIPS Electric Power Administration Fee Calculation Worksheet with attachments when required. If a public entity or qualifying non-profit customer believes that they have procured retail electricity from a TIPS REP through the TIPS Contract, with or without the assistance of a third-party consultant, and they have not received the project-specific TIPS Retail Electricity Contract Confirmation then no TIPS procurement has taken place and the public/non-profit entity may have made the purchase in violation of applicable public procurement laws unless or until the TIPS Retail Electricity Contract Confirmation is properly issued.

Overview of Solicitation Process

TIPS, a department of Education Service Center Region 8, issued Request for Proposals (RFP) for Retail Electric Power. The RFP and all the "due diligence" documentation is posted on the TIPS website at www.tips-usa.com. After the opening of the proposals, all proposals were evaluated, TIPS contract terms and conditions were negotiated, and each retail electric supplier's contracts were negotiated to provide special conditions and protections for TIPS Members.

Value of REP Program for TIPS Members

Utilizing the TIPS retail electricity agreement satisfies the competitive bidding requirements, simplifies and speeds the procurement process, and reduces costs to the TIPS Member because the Member does not have to create, publish, evaluate, negotiate and award a Request for Proposals as required by Texas Education Code §44.031, and allows the agency to get competitive current market pricing. TIPS has performed all these steps for you and awarded "not to exceed" pricing in our agreements. Additional price competitiveness can be achieved by TIPS Members by utilizing a best and final offer process recommended in this document.

Ability to Move Quickly to Capture Favorable Market Prices

The TIPS REP program enables TIPS Members to simplify and shorten the normal procurement cycle associated with purchasing electricity. This can be very valuable when power prices are highly volatile and may decline to attractive levels or a Member wants to secure an electricity contract before prices rise again or secure a long-term contract under favorable market conditions. To maintain compliance, absent an interlocal agreement, a public-sector entity would have to conduct a formal RFP in order to enter into an electricity contract. This requires gathering stakeholders and experts, conducting an assessment, lengthy public notice period, the development of a formal complex RFP, reviewing numerous responses, evaluating criteria, short listing bidders and negotiating multiple retail power contracts. Many agencies in the past have done this to the best of their ability and have had short comings with compliance, terms and or pricing, and as a result, putting the agency and vendor at risk for a significant expenditure for the agency and vendors. However, when TIPS Members leverage the TIPS REP program they will be able to move much quicker through the procurement process. TIPS has already obtained current market information, energy market expertise, best practices, and compliance experts, conducted a formal RFP and selected the best qualified and most competitive retail energy providers. TIPS has also already negotiated each providers' terms and conditions on behalf of its members. (TIPS Members may add terms to the pre-negotiated contracts as desired). Instead of having to conduct a formal RFP to purchase electricity, TIPS Members will need to contact the awarded retail energy providers (REPs) and notify them of their interest in compliantly

purchasing electricity through their TIPS Agreement. It is highly recommended, however, that TIPS Members compare prices and contracts between TIPS awarded REPs and create an additional competitive environment.

Not-To-Exceed Margin Agreement with REPs

One of the major benefits of the TIPS REP Program is that each awarded REP agreed to a “not to exceed” profit margin. The purpose of this was to ensure that TIPS Members would always receive a competitive price when soliciting pricing proposals from the four awarded REPs. When a TIPS Member solicits prices from the awarded REPs, each REP will base its price on the then current market conditions which will change over time causing their offer prices to rise and fall. However, the profit margin they are allowed to charge a TIPS Member cannot exceed an agreed to level. The intent of this was to transfer the competitiveness shown by the REPs during the formal RFP process conducted by TIPS to the offers provided to TIPS Members at the time the actual retail electricity power is contracted for between the Member and the REP. However, while each REP agreed to a not to exceed profit margin, there is no minimum profit margin that must be charged. Thus, further margin compression can be achieved. TIPS highly encourages its members to create a competitive environment during the informal solicitation process by including all TIPS awarded REPS to ensure the most attractive and best value prices are achieved.

Pre-Negotiated Contract Terms & Conditions

TIPS has pre-negotiated the terms and conditions of each REP’s contracts in order to provide special conditions and protections for TIPS Members. TIPS does not provide legal services to its Members and insists that TIPS Members have their legal counsel review the TIPS approved REP contract provided by the REP chosen by the Member. TIPS Members may negotiate alternate terms and conditions provided they do not materially change the TIPS award agreements with the REPs in a way that diminishes the competitive nature of the RFP process. While TIPS heavily negotiated the terms and conditions of each of the four REPs, some contractual differences still exist between each REP. TIPS encourages TIPS Members to compare those contracts with the assistance of counsel to identify and compare the benefits of each. TIPS Members may initiate or demand any changes to the REP contracts between the Vendors and the Member, but the Vendor may not initiate or demand any changes to the document.

Suggested Best Practices for Contract Use

1. Let the REP know that you are seeking a TIPS quote and purchase before initiating.
2. Review each supplier’s pre-negotiated end user contract and finalize any member specific contract changes with the REP, so if the REP provides the best value after the best and final pricing process, the market price can be accepted without delay and before the market price offer expires. If the Member decides that one or more of the Vendor’s REP contract is unacceptable and the Vendor will not make the desired Member’s requested changes such that the Member chooses not to use that Vendor(s), then the unacceptable Vendors should be left out of the best and final pricing process.
3. Solicit current market prices from all REPs. TIPS strongly encourages TIPS Members to conduct an “informal” RFP to compete the electricity price for a best and final offer from all awarded REPs under the TIPS agreement or from the Member accepted REPs. This provides a current competitive environment that is designed to achieve best value for the Member.
4. Prior to requesting best and final prices from each REP, request “indicative” prices one or two days prior to the day you intend to award the contract. Once the indicative prices have been received from all REPs, provide them feedback on how competitive their price was in relation to the other REPs. Disclosing an REP’s proposed price to another REP is not the recommended method for providing price feedback. However, letting an REP know whether they are in second place, third place etc. is recommended.

Additionally, letting the same REP know, in general terms, how much higher their price was on an annual spend basis than the lowest REP is considered good feedback. Providing this information within one or two days prior to contract award ensures the price feedback provided to each REP is current and not days or weeks old. This allows each REP to better evaluate the price they plan to offer as their best and final price.

5. Notify REPs of when best and final prices are due. When soliciting best and final prices it is imperative that Board approval to execute a contract has been received and that the authorized signatory is available to sign the contract the same day the final prices are received. This ensures that the most competitive and best overall value offer is secured on the final pricing day.
6. Solicit best and final prices & award contract. Stipulate that all final prices are to be received at the same time. Understand from each REP what time each REP supplier would need an executed contract returned by in order to fully hedge the power being bought. Some suppliers will require contracts returned by 1:30 pm while others will accept contracts back as late as 4pm. Ensure the authorized signatory is available during this window. TIPS recommends the final award be based on a combination of price, contract integrity and customer service. A scoring matrix designed by the TIPS Member to include these criteria are established prior to final prices being received is very helpful in properly assessing the total value offered based on the factors important to the TIPS Member entity.
7. Present the final award to your selected Vendor and receive the contract-specific TIPS Retail Electricity Contract Confirmation for your procurement file. The TIPS Retail Electricity Contract Confirmation will be issued promptly upon TIPS' receipt and approval of the Retail Electricity Provider's (REP's) required delivery of the executed, standardized TIPS Retail Electricity Contract and the required TIPS Electric Power Administration Fee Calculation Worksheet with attachments when required.