

## **Overview and Recommended Processes for Use of TIPS 230506 Natural Gas Contract**

TIPS recognized a need for our Members to purchase natural gas utilizing a cooperative contract, and to meet that need, has awarded a TIPS Contract in compliance with Texas Education Code 44.031. The agreements are available for use by Texas TIPS Members, and only when appropriate under the laws and policies of their specific jurisdiction.

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 Natural Gas Contract Confirmation for their procurement file. The TIPS Natural Gas Contract Confirmation will be issued promptly upon TIPS' receipt and approval of the Natural Gas Provider's (NGP's) required delivery of the executed, Natural Gas Contract and the required TIPS Natural Gas Administration Fee Calculation Worksheet with attachments when required. If a public entity or qualifying non-profit customer believes that they have procured natural gas from a TIPS NGP through the TIPS Contract, with or without the assistance of a third-party consultant, and they have not received the project-specific TIPS Natural Gas 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 Natural Gas Contract Confirmation is properly issued.

### **Overview of Solicitation Process**

TIPS, a department of Education Service Center Region 8, issued Request for Proposals (RFP) for Natural Gas. The RFP and all the "due diligence" documentation is posted on the TIPS website or available to TIPS Members upon request. After the opening of the proposals, all proposals were evaluated pursuant to the published scoring criteria.

### **Value of NGP Program for TIPS Members**

Utilizing the TIPS natural gas agreement may satisfy the competitive bidding requirements, simplify and speed up the procurement process, and reduce costs to the TIPS Member because the Member may not have to create, publish, evaluate, negotiate, and award a Request for Proposals as required by Texas Education Code §44.031. However, this process allows the agency to get competitive current market pricing. TIPS has performed all 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 processes.

### **Ability to Move Quickly to Capture Favorable Market Prices**

The TIPS NGP program enables TIPS Members to simplify and shorten the normal procurement cycle associated with purchasing natural gas. This can be very valuable when power prices are highly volatile and may decline to attractive levels, or a Member wants to secure a natural gas 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 a natural gas 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, and short listing bidders. Many agencies in the past have done this to the best of their ability and have had shortcomings with compliance, terms, or pricing. 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 NGP program they will be able to move much quicker through the procurement process. TIPS has already obtained current market information, gas market expertise, best practices, and compliance experts, and conducted a formal RFP. TIPS Members will need to contact the awarded NGP's and notify them of their interest in compliantly purchasing natural gas through their TIPS Agreement. It is highly recommended, however, that TIPS Members compare prices and contracts between TIPS awarded NGP's and other outside quotes to promote additional competition.

### **Not-To-Exceed Margin Agreement with NGPs**

One of the major benefits of the TIPS NGP Program is that each awarded NGP 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. When a TIPS Member solicits prices from the awarded NGPs, NGPs will base their 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 level. However, while NGPs 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 soliciting quotes from multiple vendors, whether within or outside of the TIPS program.

### **Suggested Best Practices for Contract Use**

1. Let NGP’s know that you are seeking a TIPS quote and purchase before initiating.
2. Review and consider the sample contract and NGP’s standard terms and conditions. TIPS Member may want to seek negotiated terms prior to proceeding with the following process. If NGP’s terms are unsatisfactory or non-negotiable, TIPS Member may want to preclude NGP from the outset and consider a different procurement method.
3. Solicit current market prices from all NGP’s that Member is considering. TIPS strongly encourages TIPS Members to conduct an “informal” RFP to compete the natural gas price for a best and final offer from all NGPs under Member’s consideration. 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 NGP’, 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 NGPs, provide them feedback on how competitive their price was in relation to the other NGPs. Disclosing an NGP’s proposed price to another NGP is not the recommended method for providing price feedback. However, letting an NGP know whether they are in second place, third place etc. is recommended. Additionally, letting the same NGP know, in general terms, how much higher their price was on an annual spend basis than the lowest NGP is considered good feedback. Providing this information within one or two days prior to contract award ensures the price feedback provided to each NGP is current and not days or weeks old. This allows each NGP to better evaluate the price they plan to offer as their best and final price.
5. Notify NGPs 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. Review NGP's contract terms and negotiate terms in the best interest of your entity prior to signing. If a Vendor will not accept or consider Member's required negotiations, they may be disqualified from the running at Member's sole discretion.
  
7. Solicit best and final prices and award contract. Stipulate that all final prices are to be received at the same time. Understand from each NGP what time each NGP 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 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.
  
8. Present the final award to your selected Vendor and receive the contract-specific TIPS Natural Gas Contract Confirmation for your procurement file. The TIPS Natural Gas Contract Confirmation will be issued promptly upon TIPS' receipt and approval of the NGP's required delivery of the executed Natural Gas Contract and the required TIPS Natural Gas Administration Fee Calculation Worksheet with attachments when required.