

VENDOR CONTRACT

Between Mckinstry Essention LLC and
(List Vendor or Company Name)

THE INTERLOCAL PURCHASING SYSTEM (TIPS) For Comprehensive HVAC Solutions and Services # 01-032615

General Information

The contract shall include the contract, the terms and conditions, special terms and conditions, any agreed upon amendments, as well as all of the sections of the solicitation and the awarded vendor's proposal. Once signed, if the awarded vendor's proposal varies or is unclear in any way from the TIPS contract, 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.

The following pages will constitute the contract 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 contract. NOTE: The award of this contract to vendor is made following all requirements to meet the Competitively Bid Procurement Laws.

The Vendor Contract ("Contract") 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 VIII Education Service Center, having its principal place of residence at 4845 North US Hwy 271, Pittsburg, Texas 75686. This contract 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.

Terms and Conditions

Freight

All deliveries shall be freight prepaid, F.O.B. destination and shall be included in all pricing offered unless otherwise clearly stated in writing.

Warranty Conditions

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

Customer Support

The Vendor shall provide timely and accurate customer support to TIPS members. Vendors shall respond to such requests within one (1) working day after receipt of the request. Vendor shall provide training regarding products and services supplied by the Vendor unless otherwise clearly stated in writing at the time of purchase. (Unless training is a line item sold or packaged and must be purchased with product.)

Contracts

All contracts and agreements between Vendors and TIPS Members shall strictly adhere to the statutes that are set forth in the Uniform Commercial Code as most recently revised.

Contracts for purchase will normally be put into effect by means of a purchase order(s) executed by authorized agents of the participating government entities.

Davis Bacon Act requirements will be met when Federal Funds are used for construction and/or repair of buildings.

Tax exempt status

A taxable item sold, leased, or rented to, or stored, used, or consumed by, any of the following governmental entities is exempted from the taxes imposed by this chapter: (1) the United States; (2) an unincorporated instrumentality of the United States; (3) a corporation that is an agency or instrumentality of the United States and is wholly owned by the United States or by another corporation wholly owned by the United States; (4) the State of Texas; (5) a Texas county, city, special district, or other political subdivision; or (6) a state, or a governmental unit of a state that borders Texas, but only to the extent that the other state or governmental unit exempts or does not impose a tax on similar sales of items to this state or a political subdivision of this state. Texas Tax Code § 151.309.

Assignments of contracts

No assignment of contract may be made without the prior written approval of TIPS. Payment can only be made to the awarded Vendor or vendor assigned dealer.

Disclosures

1. Vendor affirms that he/she 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 contract.
2. 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 participants in the TIPS program.
3. 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 contract.

Renewal of Contracts

This contract period is for one (12) months with an option for renewal for 2 consecutive years. Total term of contract can be up to 3 years if sales are reported through the contract and both parties agree.

Shipments

The Vendor shall ship ordered products within five (5) working days after the receipt of the order. If a product cannot be shipped within that time, the Vendor shall notify TIPS and the requesting entity as to why the product has not shipped and shall provide an estimated shipping date, if applicable. TIPS or the requesting entity may cancel the order if estimated shipping time is not acceptable.

Invoices

The Vendor or vendor assigned dealer shall submit invoices, to the TIPS participant. Each invoice shall include the TIPS participant's purchase order number. The shipment tracking number or pertinent information for verification of TIPS participant receipt shall be made available upon request. The Vendor or vendor assigned dealer shall not invoice for partial shipments unless agreed to in writing in advance by TIPS and the TIPS participant.

Payments

The TIPS participant will make payments directly to the Vendor or vendor assigned dealer at net 30 days after receiving invoice.

Pricing

The Vendor contracts to provide pricing to TIPS and its participating governmental entities that is the lowest pricing available to like cooperative purchasing customers and the pricing shall remain so throughout the duration of the contract. The Vendor agrees to not sell to TIPS members at a price lower than can be obtained thru the TIPS contract.

The Vendor agrees to promptly lower the cost of any product purchased through TIPS following a reduction in the manufacturer or publisher's direct cost to the Vendor. Price increases will be honored. However, the Vendor shall honor previous prices for thirty (30) days after written notification to TIPS of an increase.

All pricing submitted to TIPS shall include the Two Percent 2% participation fee to be remitted to TIPS by the Vendor. Vendor will not show adding the 2% per total purchase to the invoice presented to customer.

Participation Fees

Vendor or vendor assigned dealer contracts to pay 2% on all sales to TIPS on a monthly submission report. The Vendor or vendor assigned dealer is responsible for keeping record of all sales that go through the TIPS contract. Report may be sent to TIPS electronically while check for the 2% is mailed. Failure to pay the 2% participation fee will result in termination of contract.

Indemnity

1. **Indemnity for Personality Contracts.** Vendor agrees to indemnify and hold harmless and defend TIPS, its member(s), officers and employees, from and against all claims and suits for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and attorney's fees, arising out of, or resulting from, Vendor's performance of this contract, 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, invitees, whether or not such claims are based in whole or in part upon the negligent acts or omissions of the TIPS, member(s), officers, employees, or agents.
2. **Indemnity for Performance Contracts.** The Vendor agrees to indemnify and hold harmless and defend TIPS, its member(s), officers and employees from and against all claims and suits for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and attorney's fees, arising out of, or resulting from, Vendor's work under this contract, 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. Vendor further agrees to indemnify and hold harmless and defend TIPS, its member(s), officers and employees, from and against all claims and suits for injuries (including death) to an officer, employee, agent, subcontractor, supplier or equipment lessee of the Vendor, arising out of, or resulting from, Vendor's work under this contract whether or not such claims are based in whole or in part upon the negligent acts or omissions of the TIPS, its member(s), officers, employees, or agents.

Attorney's Fees--Texas Local Government Code § 271.159 is expressly referenced.

Pursuant to §271.159, TEXAS LOC. GOV'T CODE, in the event that any one of the Parties is required to obtain the services of an attorney to enforce this Agreement, the prevailing party, in addition to other remedies available, shall be entitled to recover reasonable attorney's fees and costs of court.

Multiple Vendor Awards

TIPS reserves the right to award multiple vendor contracts for categories when deemed in the best interest of the membership. Bidders scoring 80% or above will be considered for an award. Categories are established at the discretion of TIPS.

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 contract or in any other communication between TIPS and the Vendor may be construed as a guarantee that TIPS participants will submit any orders at any time. TIPS reserves the right to request additional proposals for items already on contract at any time.

Purchase Order Pricing/Product Deviation

If a deviation of pricing/product on a purchase order occurs, TIPS is to be notified within 24 hours of receipt of order.

Cancellation for non-performance or contract deficiency

TIPS may terminate any contract if Vendor has not used the contract, or if purchase volume is determined to be "low volume" in any 12-month period. TIPS reserves the right to cancel the whole or any part of this contract due to failure by awarded vendor to carry out any obligation, term or condition of the contract. TIPS may issue a written deficiency notice to awarded vendor for acting or failing to act in any of the following:

- Providing material that does not meet the specifications of the contract;
- Providing work and/or material that was not awarded under the contract;
- Failing to adequately perform the services set forth in the scope of work and specifications;
- Failing to complete required work or furnish required materials within a reasonable amount of time;
- Failing to make progress in performance of the contract and/or giving TIPS reason to believe that awarded vendor will not or cannot perform the requirements of the contract; and/or
- Performing work or providing services under the contract prior to receiving a TIPS reviewed purchase order for such work.

Upon receipt of the written deficiency, awarded vendor shall have ten (10) days to provide a satisfactory response to TIPS. Failure to adequately address all issues of concern may result in contract cancellation. Upon cancellation under this paragraph, all goods, materials, work, documents, data and reports prepared by awarded vendor under this contract shall become the property of the Member on demand.

Member Purchasing Procedures

Purchase orders are issued by participating member to the awarded vendor as follows:

- Make PO payable to Awarded Vendor.
- List TIPS Vendor Contract #01-032615 on PO.
- Email PO as a PDF attachment to tipspo@tips-usa.com
- Vendor will receive the PO from the TIPS PO System. Vendor is required to follow the link in the email and open each PO to complete the return acknowledgement process to TIPS.

Form of Contract

The form of contract for this solicitation shall be the sealed Request for Proposal, the awarded proposal(s) and best and final offer(s), and properly issued and reviewed purchase orders referencing the requirements of the Request for Proposals. If a vendor submitting an offer requires TIPS and/or Member to sign an additional agreement, a copy of the proposed agreement must be included with the proposal.

Vendor contract documents: TIPS will review proposed vendor contract documents. Vendor's contract document shall not become part of the TIPS contract with vendor unless and until an authorized representative of TIPS reviews and approves it.

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 fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of services under the contract. TIPS reserves the right to stop work and/or cancel contract of any awarded vendor whose license(s) expire, lapse, are suspended or terminated.

Novation

If awarded vendor sells or transfers all assets or the entire portion of the assets used to perform this contract, a successor in interest must guarantee to perform all obligations under this contract. TIPS reserves the right to accept or reject any new party. A simple change of name agreement will not change the contractual obligations of awarded vendor.

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 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 Member has not prepared the site, unless awarded vendor does the preparation work at no cost, or until 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 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 contract shall adhere to local smoking policies. Smoking will only be permitted in posted areas or off premises.

Invoices

The awarded vendor shall submit invoices to the participating entity clearly stating "Per TIPS Contract #". The shipment tracking number or pertinent information for verification shall be made available upon request.

Marketing

Awarded vendor agrees to allow TIPS to use their name and logo within website, marketing materials and advertisement. Any use of TIPS name and logo or any form of publicity, inclusive of press release, regarding this contract by awarded vendor must have prior approval from TIPS.

Supplemental agreements

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

contract is exclusively between the participating entity and awarded vendor. TIPS, its agents, members and employees shall not be made party to any claim for breach of such 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 RFP and any awarded contract thereof. Applicable laws and regulations must be followed even if not specifically identified herein.

Audit rights

Awarded Vendor shall, at their sole expense, maintain appropriate due diligence of all purchases made by TIPS Member that utilizes this Contract. TIPS and Region 8 ESC each reserve the right to audit the accounting 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. TIPS shall have authority to conduct random audits of Awarded Vendor's pricing that is offered to Members. 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. In the event of an audit, the requested materials shall be 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.

Services

When applicable, performance bonds will be required on construction or labor required jobs over \$100,000 and payment bonds on jobs over \$25,000 or awarded vendor will meet the member's local and state purchasing requirements. Awarded vendors may need to provide additional capacity as jobs increase. Bonds will not require that a fee be paid to TIPS. The actual cost of the bond will be a pass through to the member and added to the purchase order.

Scope of Services

The specific scope of work for each job shall be determined in advance and in writing between TIPS Member and Awarded vendor. It is okay if the member provides a general scope, but the awarded vendor should provide a written scope of work to the member as part of the proposal. Once the scope of the job is agreed to, the member will issue a PO with the estimate referenced as an attachment along with bond and any other special provisions agreed to for the member. If special terms and conditions other than those covered within this solicitation and awarded contracts are required, they will be attached to the PO and shall take precedence over those in the base contract.

Project Delivery Order Procedures

The member having approved and signed an Interlocal agreement may make a request of the awarded vendor under this contract when the 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 member as soon as possible, but must make contact with the member within two working days.

Scheduling of Projects

Scheduling of projects (if applicable) will be accomplished when the member issues a purchase order that will serve as "the notice to proceed". 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 member inspect the work for acceptance under the scope and terms in the PO. The member will issue in writing any corrective actions that are required. Upon completion of these items, the member will issue a completion notice and final payment will be issued.

Support Requirements

If there is a dispute between the awarded vendor and member, TIPS or its representatives will assist 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.

Special Terms and Conditions

It is the intent of TIPS to contract with a reliable, high performance vendor to supply commodities 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.

- **Contracts:** All vendor purchase orders **must be emailed to 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 address/email above within 24 business hours and confirm its receipt with TIPS.
 - **Promotion of Contract:** It is agreed that Vendor will encourage all eligible entities to purchase from the TIPS Program. Encouraging entities to purchase directly from the Vendor and not through TIPS contract is not acceptable to the terms and conditions of this contract and will result in removal of Vendor from Program. Vendor is expected to use marketing funds for the marketing and promotion of this contract.
 - **Daily Order Confirmation:** All contract purchase orders will be faxed twice daily from TIPS to vendor. The vendor must confirm receipt of orders to the member (customer) within 24 business hours.
 - **Vendor custom website for TIPS:** If Vendor is hosting a custom TIPS website, updated pricing must be posted by 1st of each month.
 - **Back Ordered Products:** If product is not expected to ship within 3 business days, customer is to be notified within 24 hours and appropriate action taken based on customer request.
-

Check one of the following responses to the General Terms and Special Terms and Conditions:

☐

We take no exceptions/deviations to the general and special terms and conditions.

(Note: If none are listed below, it is understood that no exceptions/deviations are taken.)

☒

We take the following exceptions/deviations to the general and special terms and conditions. All exceptions/deviations must be clearly explained. Reference the corresponding general or special terms and conditions that you are taking exceptions/deviations to. The proposer must clearly state if you are adding additional terms and conditions to the general or special terms and conditions. Provide details on your exceptions/deviations below:

(Note: Unacceptable exceptions shall remove your proposal from consideration for award. TIPS shall be the sole judge on the acceptance of exceptions/deviations and TIPS's decision shall be final.

Please see our exceptions/deviations on the following page.

B.2 Exceptions/Deviations

All exceptions/deviations must be clearly explained. Reference the corresponding general or special terms and conditions that you are taking exceptions/deviations to. The proposer must clearly state if you are adding additional terms and conditions to the general or special terms and conditions. Provide details on your exceptions/deviations below:

Our contracts department has reviewed the General and Special Terms and Conditions in the TIPS Request for Proposals and has determined that we need to take the exceptions/deviations outlined below. Our overarching goal is to be an exceptional company with which to work and we look forward to working with you in finalizing mutually agreeable terms.

CLAUSE	§: PAGE	CHANGE
Indemnity	Page 12	Insert the following phrase at the beginning of Paragraph 1. and the beginning of Paragraph 2. "Limited to the extent of the Vendor's proportional fault,"
Waiver of Consequential Damages		Add a Waiver of Consequential Damages paragraph (this language does not specifically contradict any language in the RFP or the contract for qualification.) "Neither party shall be liable to the other party for any consequential, indirect, special, incidental, exemplary, or similar, damages or losses, including loss of profits, arising out of or relating to this agreement, whether based in contract or tort or any other theory, even if a party has been advised of the possibility of such damages."
Pricing – Paragraph 1	Page 12	Add the following language: "The Vendor contracts to provide pricing to TIPS and its participating governmental entities that is the lowest pricing available to like cooperative purchasing customers <u>in same location and situation</u> and the pricing shall remain so throughout the duration of the contract."
Pricing – Paragraph 2	Page 12	Strike this language: "The Vendor agrees to promptly lower the cost of any product purchased through TIPS following a reduction in the manufacturer or publisher's direct cost to the Vendor."

Vendor Profile

1.1. Disadvantaged/Minority/Women Business Enterprise (Required by some participating governmental entities)

Vendor certifies that their firm is a HUB and/or D/M/WBE

☐ Yes ☒ No

(Vendor must fill out MWBE form: http://www.tips-usa.com/assets/documents/docs/MWBE_form.pdf)

And include the form in Section 7 (Certificates)

1.2. Certification of Residency (Required by the State of Texas)

Company submitting bid is a Texas resident bidder.

☒ Yes ☐ No

Vendor's principal place of business is in the city of Dallas State of Texas

1.3. Felony Conviction Notice (Required by the State of Texas)

My firm is, as outlined in the Instructions to Bidders:

☐ A publicly held corporation; therefore, this reporting requirement is not applicable.

☒ Is not owned or operated by anyone who has been convicted of a felony.

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

If the 3rd box is checked, a detailed explanation of the names and convictions must be attached.

1.4. Pricing Information

1.4.1. In addition to the typical unit pricing furnished herein, the Vendor agrees to furnish all current and future products at prices that are proportionate to Dealer Pricing. ☒ Yes ☐ No

If answer is no, attach a statement detailing how pricing for TIPS participants would be calculated.

1.4.2. Pricing submitted includes the 2% TIPS participation fee.

☐ Yes ☒ No

1.4.3. Vendor agrees to remit to TIPS the required 2% participation fee.

☒ Yes ☐ No

1.4.4. Additional discounts to TIPS members for bulk quantities or scope of work?

☐ Yes ☒ No

1.5. Vendor Service

1.5.1. Average shipping time after receipt of customer order is N/A working days.

1.5.2. Which description best describes your company's position in the distribution channel?

☐ Manufacturer direct

☐ Certified education/government reseller

☐ Authorized distributor

☐ Manufacturer marketing thru reseller

☐ Value-added reseller

☒ Other Turnkey solution provider and HVAC installer

1.5.3. Company experience in this category. 54 Years

The Vendor can provide services and/or products to all 50 US States?

☐ Yes ☒ No

If answer is no, please list which states can be served TX, OK, AR, MO

1.5.4. Provisions for purchase with federal funds for contracts exceeding \$100,000. These forms are for non-construction contracts. Fill out the following forms and include in the Section 7 (Certificates) of your proposal:

[http://www.tips-usa.com/assets/documents/docs/Federal_Funds_over_\\$100K_non-construction.pdf](http://www.tips-usa.com/assets/documents/docs/Federal_Funds_over_$100K_non-construction.pdf)

http://www.tips-usa.com/assets/documents/docs/Suspension_or_Debarment_Certificate.pdf

Prices are guaranteed for: (Standard Term is "Term of Contract") Term selected will affect scoring.

 ☐ Month(s); or ☐ Year(s); or ☒ Term of Contract

RFP- Comprehensive HVAC Solutions and Services – Due February 12, 2015 at 3:00 p.m.

The Interlocal Purchasing System (TIPS)

Lead Agency – Region VIII Education Service Center

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MeKinstry

Vendor Profile

1.1. Disadvantaged/Minority/Women Business Enterprise (Required by some participating governmental entities)

Vendor certifies that their firm is a HUB and/or D/M/WBE

☐ Yes ☒ No

(Vendor must fill out MWBE form: http://www.tips-usa.com/assets/documents/docs/MWBE_form.pdf)

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☐ A publicly held corporation; therefore, this reporting requirement is not applicable.

☒ Is not owned or operated by anyone who has been convicted of a felony.

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

If the 3rd box is checked, a detailed explanation of the names and convictions must be attached.

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☒ Yes ☐ No

If answer is no, attach a statement detailing how pricing for TIPS participants would be calculated.

1.4.2. Pricing submitted includes the 2% TIPS participation fee.

☐ Yes ☐ No

1.4.3. Vendor agrees to remit to TIPS the required 2% participation fee.

☒ Yes ☐ No

1.4.4. Additional discounts to TIPS members for bulk quantities or scope of work?

☐ Yes ☒ No

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1.5.2. Which description best describes your company's position in the distribution channel?

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☐ Certified education/government reseller

☐ Authorized distributor

☐ Manufacturer marketing thru reseller

☐ Value-added reseller

☒ Other Turnkey solution provider and HVAC installer

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The Vendor can provide services and/or products to all 50 US States?

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If answer is no, please list which states can be served TX, OK, AR, MO

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[http://www.tips-usa.com/assets/documents/docs/Federal_Funds_over_\\$100K_non-construction.pdf](http://www.tips-usa.com/assets/documents/docs/Federal_Funds_over_$100K_non-construction.pdf)
http://www.tips-usa.com/assets/documents/docs/Suspension_or_Debarment_Certificate.pdf

Prices are guaranteed for: (Standard Term is "Term of Contract") Term selected will affect scoring.

 ☐ Month(s); or ☐ Year(s); or ☒ Term of Contract

Company and/or Product Description: (This information will appear on the TIPS website for your company, if awarded a TIPS contract.) Limit 750 characters.

The McKinstry family of companies provides full design, build, operate, and maintain (DBOM) services as well as ESCO services. McKinstry's professional staff and trades people deliver a variety of services including energy efficiency services and finance, issue management, and onsite facility management through McKinstry Essention, LLC; and mechanical engineering, construction, architectural metals, and 24/7 maintenance through McKinstry Co, LLC. We advocate collaborative and sustainable solutions designed to ensure improved systems efficiency occupant comfort, reduce facility operational costs and optimize client profitability for the life of their building and systems. We have a wealth of experience with all major HVAC systems, and offer our clients vendor-neutral solutions.

If applicable, vendor should list Reseller/Dealers here or provide listing as attachment to proposal.

Dealer Name _____ **Tel** _____

Address _____ **Fax** _____

Primary Contact _____ **Email** _____

Dealer Name _____ **Tel** _____

Address _____ **Fax** _____

Primary Contact _____ **Email** _____

Dealer Name _____ **Tel** _____

Address _____ **Fax** _____

Primary Contact _____ **Email** _____

Dealer Name _____ **Tel** _____

Address _____ **Fax** _____

Primary Contact _____ **Email** _____

ALL SALES CALLS WILL BE DIRECTED TO THE TWO INDIVIDUAL VENDOR CONTACTS LISTED BELOW. THESE TWO CONTACTS WILL BE RESPONSIBLE FOR KNOWING THE TIPS

CONTRACT AND CONTRACT PRICING. THESE NAMES WILL BE LISTED ON THE TIPS WEBSITE AS PRIMARY AND SECONDARY CONTACTS FOR THE AWARDED CONTRACT.

Primary Contact:

Name: Michael Grabham
Title: Regional Director
Email: michaelg@mckinstry.com
Phone: (972) 532-4277
Fax: (972) 499-7918
Mobile: (214) 213-0905

Secondary Contact:

Name: David White
Title: Business Development Manager
Email: davidwh@mckinstry.com
Phone: (210) 301-7083
Fax: (972) 499-7918
Mobile: (210) 748-7222

Administrative Fee REPORTING TO TIPS – You will receive a Monthly Report by Email to submit with a check for 2% on all sales that go through this contract. Please list below who will be responsible for collecting and reporting these sales to TIPS:

Contact person: Lindsay Garner
Email: lindsayg@mckinstry.com
Telephone: (214) 208-6473

WORDS FOR “SEARCH ENGINE” - Please list words to be posted on your company’s page on the TIPS website (if you receive an award from this proposal). Words may be product names, manufacturers, or other words that are associated with the category of award. **YOU MAY NOT LIST NON-CATEGORY ITEMS.** Words to be included in the Search Engine for my Company (Limit 500 words): HVAC, Heating, Ventilation, Air conditioning, HVAC, Commissioning, Re-commissioning, Start-up, Energy Services, Performance Contracting, ESPC, ESCO, Building Automation, Green Building Design, Renewable Energy, Carbon Reduction, Facilities Management, Construction Solutions, design-build, air handlers, chillers, controls, duct free split systems, fan coils, PTACs, rooftop units, boilers, split systems, indoor air quality products, turnkey optimization programs, energy efficiency, energy, guaranteed energy savings, testing, balancing

CONTRACT Signature Form

The undersigned hereby proposes and agrees to furnish goods and/or services in strict compliance with the terms, specifications and conditions at the prices quoted unless noted in writing. The undersigned further certifies that he or she is an authorized agent of the company and has authority to negotiate and contract for the company named below.

Note: The information in BOLD will be the PRIMARY COMPANY INFORMATION listed on the Vendor Page.

Company name	McKinstry Essention, LLC
Mailing Address	13465 Midway Road Suite 100
City/State/Zip	Dallas, TX 75244
Telephone No.	(972) 532-4278
Fax No.	(972) 499-7918
E-mail address	mflores@mckinstry.com
Authorized signature	
Printed name	Michael Flores
Position with company	Vice President, South
 Purchase Order Contact Person	 Name: Lindsay Garner
(This person is responsible for receiving	Email: lindsayg@mckinstry.com
Purchase Orders from TIPS)	Phone: (214) 208-6473
 Company Website	 www.mckinstry.com

This contract is for a total TERM of three years, but is reviewed and renewed every 12 months. Vendors shall honor the participation fee for any sales made based on the TIPS contract. Failure to pay the fee will be grounds for termination of contract and will affect the award of future contracts.

	<u>3-26-15</u>
TIPS Authorized Signature	Date
	<u>3-26-15</u>
Approved by Region VIII ESC	Date

B.5 References

The proposal response should contain a minimum of Three (3) references of customers you have served that would be considered eligible for membership in TIPS (i.e. K-12 School Districts, College/Universities, and/or City/County Government Entities). In addition to the name of the entity, a contact name and phone number shall be included.

SWEETWATER INDEPENDENT SCHOOL DISTRICT

Terry Pittman
Superintendent
tpittman@sweetwaterisd.net
(325) 235-8601

HVAC replacement in five schools, performed during the district's spring break and on weekends to avoid disrupting classes. Replaced a total of 105 units (including 101 packaged units, 2 split systems, and 2 air-cooled chillers) and implemented an Energy Savings Performance Contract. Upgrades are expected to save the District \$110,475 annually on utility costs.

Continuing to provide grant administration and required SECO reporting for the district, which includes verifying the anticipated savings are achieved.



BALLINGER INDEPENDENT SCHOOL DISTRICT

Larry Taylor
Interim Superintendent
(325) 365-3588

Replaced 53 HVAC units (including 41 packaged units and 12 split systems) at Ballinger elementary, junior high, and high schools. McKinstry approached the district with an opportunity to pay for these upgrades through a State Energy Conservation Office (SECO) grant program. The McKinstry team applied for the grant on behalf of the district, delivered the project as the prime contractor and provided project and construction management, and is handling post-project grant administration and reporting requirements.



CITY OF CORPUS CHRISTI, TX

John Maggiore
Program Manager
johnm@cctexas.com
(361) 826-3781

Began with development of a city-wide energy efficiency, clean air, and sustainability plan followed by phased implementation. During Phase I, implemented improvement measures at seven buildings and during Phase II performed work at 76 buildings, from libraries and a museum to recreation centers and office buildings.

Measures included HVAC controls improvements energy management control systems, computer and vending power management, lighting improvements, and chiller improvements, among others.



TEXAS STATE TECHNICAL COLLEGE

Ray Fried
Associate VP, Administrative Services, Campus Services
(325) 235 7302

Implemented energy savings strategies across all four TSTC West campuses including air conditioning system replacements, energy management system control upgrades, campus-wide lighting retrofits, computer power management, and vending machine power management. Performed all aspects of design and project management for most systems. To implement air conditioning upgrades quickly and safely, systems were air lifted by helicopter.



B.5 References

HASKELL MEMORIAL HOSPITAL

Fran McCown
1 N Avenue North
Haskell, TX 79521
(940) 864 2621

Implement an energy savings performance contract with this rural hospital north of Abilene, TX. The scope of work included renovations of the existing HVAC, controls, lighting systems, fire protection system, and water conservation measures. The project also included full electrical demolition and installation.

The improvements are projected to produce \$12,906 in annual energy savings to the hospital.



B.6 Warranty Information

McKinstry Warranties/Guarantees

McKinstry's guarantee of performance allows us to commit to our clients that the equipment and systems installed will meet or exceed established performance standards. Our first priority will be to make certain that all newly installed equipment and systems will operate to ensure occupant safety, health, and comfort. The second priority will be to meet the project's operational and utility savings. If the equipment is maintained based on the manufacturer's guidelines, yet it does not meet the first and/or second priority, McKinstry will take the necessary steps to correct or improve equipment performance. If it is determined that the newly installed equipment has failed, we will find a final repair resolution or we will replace it.

McKinstry offers more options due to our network of buying power and our relationships with local equipment providers. We are able to reduce the initial cost of equipment, in addition to being able to arrange for extensions to the warranty period of the equipment. This combination of strong buying power and extended warranties gives us a value-added advantage we will pass on to you.

WARRANTY ENFORCEMENT ROLE

McKinstry can implement our Knowledge Response Center (KRC), an innovative 24x7 web-based system suite that allows clients to log and track warranty issues. The KRC utilizes InfoCentre™ to document relevant facility data and work flow processes in order to effectively and efficiently manage the warranty, and remote monitoring to enable the flow of real time and proactive site-specific information using the building automation systems. InfoCentre powers and serves as the information hub for our services – clients will be able to view warranty requests, note when the issue was logged, view progress on the issue, and receive confirmation when the issue is resolved. All this is handled seamlessly with minimal time commitment from the client organization. In addition, this process provides a single repository of archived information relevant to your specific facilities. Our standard warranty services include:

- Development and management of the warranty work order process;
- Management of the vendor dispatch process;
- Tracking and follow up on completion of work;
- Routine vendor performance reporting;
- Follow up with customer and project team on work satisfaction;
- Ongoing equipment status and warranty work reporting details; and
- Warranty preventative maintenance management and scheduling.

We will commission waste to energy and other future projects to ensure all equipment and systems installed will meet or exceed performance standards. We guarantee its installation and workmanship for one year against defects. Equipment typically carries the manufacturer's warranties, yet based on our relationship with vendors, we will extend warranties at no or low cost. Your warranty time period starts at date of substantial completion or occupancy. If equipment is used for temporary service, its warranty date typically will start when it is put into service.

COMMITMENT TO LONG-TERM PARTNERSHIP

McKinstry is very experienced in system performance and warranty concerns. We understand the value of equipment performing as intended. We routinely complete services—at no additional cost to the customer—after the original warranty expires to ensure our clients are satisfied and that the system operates as intended. McKinstry will provide the client with a single point of contact for long-term accountability regarding maintenance and training on all new equipment installed as part of any project.

B.7 Vendor Certificates

Vendor certifications will include applicable M/WBE and manufacturer certifications for sales and service (if applicable). Not required.

The items listed below are provided in the subsequent pages.

Non-Construction Federal Certifications

Provisions for purchase with federal funds for contracts exceeding \$100,000 - Executed

Suspension or Debarment Certificate - Executed

McKinstry W-9

State Licenses/Certificates

Texas Board of Professional Engineers Certification of Registration

Texas Use Tax Permit

Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors - Certificate

Missouri Certificate of Authority to Offer Engineering Services

Arkansas Certificate of Authorization to Conduct Business

Provisions for purchase with federal funds for contracts exceeding \$100,000
These forms are for non-construction contracts

Many TIPS members (grantees and sub-grantees) purchase goods and services with federal funds. When a member engages a contract exceeding \$100,000 and paid with federal funds, provisions are triggered by various Code of Federal Regulations requirements. Primarily 34 CFR 80.36 from the Department of Education and 7 CFR 3015 & 3016 from the Department of Agriculture for School Lunch Program. There may be other Federal programs from time to time that are not enumerated above that may fund certain projects using outside vendors. These are not optional for the contracting entity and in order to spend the federal funds certain provision and certifications must be in place to ensure legal compliance.

If your company wishes to be eligible to participate in a TIPS contract in which a member utilizes federal funds on contracts exceeding \$100,000, you must complete the following forms and provide the certifications as required on the subsequent pages.

Do you wish to be eligible to participate in a TIPS contract in which a member utilizes federal funds on contracts exceeding \$100,000?

Check your response?

YES ☒ NO ☐

Michael Flores 2-10-2015
Signature of Authorized Company Official Date

Michael Flores

Printed Name of Authorized Company Official

McKinstry Essention, LLC

Company Name

Attach to this page a current W-9 form

Please complete the forms below

Legal Compliance

It is the proposing company's duty and responsibility to have knowledge of and be responsible for the compliance with all applicable laws, rules and regulations as they apply to this procurement process and any subsequent award. The vendor agrees to comply, in all relevant respects, with all Federal, State, and Local laws, rules and regulations related to the performance of services or supply of goods to TIPS or TIPS members?

Does vendor agree? YES MP Initial of Authorized Company Official

Non-Collusive Bidding Certificate

By submitting a proposal in response to a Request for Proposals or other procurement device containing this clause, you certify that you are authorized to certify to the following:

- 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.

The vendor complied with #1 through 4 above? YES MP Initial of Authorized Company Official

SUSPENSION OR DEBARMENT CERTIFICATE

Non-Federal entities are prohibited from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement for goods or services equal to or in excess of \$100,000.00. Contractors receiving individual awards for \$25,000.00 or more and all sub-recipients must certify that the organization and its principals are not suspended or debarred.

You certify that no suspension or disbarment is in place, which would preclude receiving a federally funded contract under the Federal OMB, A-102, common rules

The vendor has not been debarred? YES MP Initial of Authorized Company Official

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.

McKinstry Essention, LLC

Name of Organization

13465 Midway Road Suite 100, Dallas, TX 75244

Address of Organization

Michael Flores, Vice President

Name / Title of Submitting Official



Signature of Submitting Official

2-10-2015

Signature Date

Provisions for purchase with federal funds for contracts exceeding \$100,000

Federal Rule (1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

Notice: Pursuant to Federal Rule (1) above, when federal funds are expended by TIPS Member, TIPS Member 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? YES AK Initial of Authorized Company Official

Federal Rule (2) 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 Federal Rule (2) above, when federal funds are expended by TIPS Member, TIPS Member 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. TIPS Member 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. Any award under this procurement process is not exclusive and the District reserves the right to purchase goods and services from other vendors when it is in the best interest of the District.

Does vendor agree? YES AK Initial of Authorized Company Official

Federal Rule (7) Notice of awarding agency requirements and regulations pertaining to reporting.

Pursuant to Federal Rule (7) above, when federal funds are expended by TIPS Member, TIPS Member requires that the proposer certify that during the term of an award by the TIPS Member resulting from this procurement process the vendor will provide reports and documentation required by all applicable law and state and federal regulations upon request by the TIPS Member or any relevant state or federal agency.

Does vendor agree? YES AK Initial of Authorized Company Official

Federal Rule (8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

Provisions for purchase with federal funds for contracts exceeding \$100,000

Pursuant to Federal Rule (8) above, when federal funds are expended by TIPS Member, TIPS Member shall address any requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract in the contract document and absent language to the contrary or if the contract silent on the subject, the District retains all rights thereto.

Does vendor agree? YES MF Initial of Authorized Company Official

Federal Rule (9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

Pursuant to Federal Rule (9) above, when federal funds are expended by TIPS Member, TIPS Member requires the proposer certify that during the term of an award by the TIPS Member resulting for this procurement process the vendor will surrender upon request any copyrighted materials owned by the TIPS Member but used in the awarded contract performance unless otherwise agreed in a written document by the parties. TIPS Member reserves the rights to all data created or provided to the vendor for the purpose of contract performance resulting for this procurement process and the vendor will surrender such data upon request unless otherwise agreed in a written document by the parties. If the contract is silent or not dispositive on the subject matter data or copyrights TIPS Member retains all rights in the data developed or gathered during the contract term.

Does vendor agree? YES MF Initial of Authorized Company Official

Federal Rule (10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

Pursuant to Federal Rule (9) above, when federal funds are expended by TIPS Member, TIPS Member requires the proposer certify that during the term and after the awarded term of an award by the TIPS Member resulting for this procurement process the vendor will grant access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

Does vendor agree? YES MF Initial of Authorized Company Official

Provisions for purchase with federal funds for contracts exceeding \$100,000

Federal Rule (11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

Pursuant to Federal Rule (11) above, when federal funds are expended by TIPS Member, TIPS Member requires the proposer certify that the awarded vendor retain of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

Does vendor agree? YES MF Initial of Authorized Company Official

Federal Rule (12) 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 \$100,000)

Pursuant to Federal Rule (12) above, when federal funds are expended by TIPS Member, TIPS Member requires the proposer certify that in performance of the contracts, subcontracts, and subgrants of amounts in excess of \$100,000, 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 agree? YES MF Initial of Authorized Company Official

Federal Rule (13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

Pursuant to Federal Rule (13) above, when federal funds are expended by TIPS Member, TIPS Member requires proposer certify that during the term of an award by the TIPS Member resulting for this procurement process the vendor will be in compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

Does vendor agree? YES MF Initial of Authorized Company Official

SUSPENSION OR DEBARMENT CERTIFICATE

Non-Federal entities are prohibited from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement for goods or services equal to or in excess of \$100,000.00. Contractors receiving individual awards for \$25,000.00 or more and all sub-recipients must certify that the organization and its principals are not suspended or debarred.

You certify that no suspension or disbarment is in place, which would preclude receiving a federally funded contract under the Federal OMB, A-102, common rules

Information may be found at <https://www.sam.gov/index.html>

Has the vendor been debarred from participation in Federal funds contracts?

NO ☒ Initial of Authorized Company Official

YES ☐ Initial of Authorized Company Official

Company Official:



Michael Flores

Company:

McKinstry Essention, LLC