

## **Overview and Recommended Process for Use of Retail Electricity Provider (REP) Program**

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 four companies 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.

### **Overview of solicitation process**

TIPS, a department of Education Service Center Region 8, issued Request for Proposals (RFP) 170603 on June 15, 2017 for Retail Electric Power. The RFP and all the due diligence is posted on the TIPS website at [www.tips-usa.com](http://www.tips-usa.com). After the opening of the proposals on July 31, 2017, 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. In January 2018, contracts were executed and final awards made to four highly qualified retail electricity providers (REPs). TIPS has tested the process and is now rolling it out to our membership.

### **Awarded Retail Electricity Providers**

The four REPs awarded are listed alphabetically below:

1. MidAmerican Energy Services, LLC
2. MP2 Energy Texas, LLC
3. Reliant Energy Retail Services, Inc.
4. TXU Energy Retail Company, LLC

### **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. See below.)

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 retail 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 and 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 recommends 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. Below is a matrix of the major negotiated terms and conditions and how each provider's contract ultimately addressed each item. It is not an exclusive list but is inclusive and represents the major differences.

**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.**

Contractual Issue	MidAmerican	MP2 Energy	Reliant Energy	TXU Energy
Venue for contract disputes	County where customer is located	Montgomery County Texas or County where buyer is located	County where customer is located	<b>For Local government entities, the dispute resolution terms are up to the TIPS Member to add to the REP contract at section 12.14.</b> For State agencies, 12.14 controls unless the TIPS Member entity initiates a change in the language in a contract amendment.
Right to trial by jury	Customer waives their right to trial by jury. Bench trial is not waived.	If court action is initiated in the County where buyer is located then customer waives their right to trial by jury. Bench trial is not waived.	Customer waives their right to trial by jury. Bench trial is not waived.	<b>For Local government entities, the dispute resolution terms are up to the TIPS Member to add to the REP contract at section 12.14</b>
No binding arbitration	Agreed by vendor	Agreed by vendor	Agreed by vendor	Agreed by vendor
Force Majeure – TIPS negotiated language to ensure that 1) if buyer claims force majeure they are only responsible for power actually consumed during event, 2) seller cannot claim force majeure due to the failure of one of their suppliers and 3) defines a buyer’s force majeure as their inability to consume the power behind the meter	Agreed to TIPS language	Agreed to TIPS language	Agreed to TIPS language	Agreed to TIPS language
Change in Law – TIPS negotiated language to ensure that if seller invokes change of law and proposes to increase the contract price that: 1) buyer has the right to object to the price increase on the	Agreed to TIPS language	Agreed to TIPS language	Agreed to TIPS language	Agreed to TIPS language

grounds that the increase is not due to a legitimate change of law event and 2) buyer may terminate the contract if an agreement on the proposed price increase cannot be reached with seller; any termination is subject to the termination payment by either party.				
Disputed invoices – allows buyers to dispute an invoice charge and withhold the disputed amount	Agreed to TIPS language	Agreed to TIPS language	Agreed to TIPS language	Agreed to TIPS language
Addition and deletion of sites – allows a buyer to add or delete meters from the contract up to a certain usage amount	Up to 20% of annual kWhs.  *Must be requested prior to contract execution	10% of annual kWhs  *Must be requested prior to contract execution	5% of annual kWhs  *Must be requested prior to contract execution	10 % of total contracted volumes  *Must be requested prior to contract execution

### Suggested best practices for program use

#### Suggested steps to take:

1. 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.

2. 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 four 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. Below are suggestions on how best to solicit prices:

- A. Gather key stakeholders, conduct a needs assessment, get buy in for using TIPS Retail Electricity Program, contact REPs, and contact TIPS if needed.
- B. Ensure each REP is aware that you will be receiving price quotes from the other awarded REPs
- C. Specify a date and time at which you want all prices proposals to be submitted. This will ensure prices are being compared from the same underlying market conditions
- D. Ensure all REPs are providing pricing at the same:
  - D.1. Contract term (i.e. 12, 24, 36 months, or longer)
  - D.2. The same list of sites to be served
  - D.3. The same product (e.g. fixed price with HUB to Load Zone congestion included)

### **Provide price feedback to REPs**

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.

### **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.

### **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.

**NOTE:** If the TIPS Member feels that they do not have the expertise or resources to conduct the final pricing process described above, TIPS has Electricity Contract Consultants under contract for you to consider helping you with the process. Please contact TIPS for questions and feedback.