

TIPS VENDOR AGREEMENT (JOC)

Between K-Con, Inc. **and**
(Company Name)

THE INTERLOCAL PURCHASING SYSTEM (TIPS),
a Department of Texas Education Service Center Region 8 for
TIPS RCSP 200201 Trades, Labor and Materials (JOC)

General Information

The Vendor Agreement ("Agreement") 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 8 Education Service Center, having its principal place of business at 4845 US Hwy 271 North, Pittsburg, Texas 75686. This Agreement 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.

The Vendor Agreement shall include and incorporate by reference this Agreement, the terms and conditions, special terms and conditions, any agreed upon amendments, as well as all of the sections of the solicitation as posted, including any addenda and the awarded vendor's proposal. Once signed, if an awarded vendor's proposal varies or is unclear in any way from the TIPS Agreement, 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. If deviations are submitted to TIPS by the proposing vendor as provided by and within the solicitation process, this Agreement may be amended to incorporate any agreed deviations.

The following pages will constitute the Agreement 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 Agreement.

A Purchase Order, Agreement or Contract is the TIPS Member's approval providing the authority to proceed with the negotiated delivery order under the Agreement. Special terms and conditions as agreed to between the vendor and TIPS Member should be added as addenda to the Purchase Order, Agreement or Contract. Items such as certificate of insurance, bonding requirements, small or disadvantaged business goals are some of the addenda possible.

Terms and Conditions

Conflicts with RS Means Unit Price Book

If the terms of the solicitation referenced RS Means Unit Price Book occur, the RS Means Book shall control if it determines the legality of the solicitation award as it relates to the requisite Means Unit Price Book.

Freight

All quotes to members shall provide a line item for cost for freight or shipping regardless if there is a charge or not. If no charge for freight or shipping, indicate by stating "No Charge" or "\$0" or other similar indication. Otherwise, all shipping, freight or delivery charges shall be passed through to the TIPS Member at cost with no markup and said charges shall be agreed by the TIPS Member unless alternative shipping terms are agreed by TIPS as a result of the proposal award.

Warranty Conditions

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

Customer Support

The Vendor shall provide timely and accurate customer support for orders to TIPS Members as agreed by the Parties. Vendors shall respond to such requests within a commercially reasonable time after receipt of the request. If support and/or training is a line item sold or packaged with a sale, support shall be as agreed with the TIPS Member.

Agreements

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

Davis Bacon Act

Davis Bacon Act requirements will be met when Federal Funds are used for construction and/or repair of buildings or as otherwise required by applicable statute or regulation.

Other Wage Rates

Other wage rates may be required by some TIPS Members and acceptance of a project by the Vendor may require the Vendor to comply with the TIPS Member's required wage rate.

Tax exempt status

Most TIPS Members are tax exempt and the related laws of the jurisdiction of the TIPS Member shall apply.

Assignments of Agreements

No assignment of Agreement may be made without the prior written approval of TIPS. Payment for delivered goods and services can only be made to the awarded Vendor, Vendor designated reseller or vendor assigned company.

Disclosures

- Vendor and TIPS affirm that he/she, or any authorized employees or agents, 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 Agreement.

- 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 the TIPS program.
- 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 Agreement.

Term and Renewal of Agreements

The Agreement with TIPS is for two (2) years with an option for renewal for additional two (2) consecutive one-year terms years. Total term of Agreement can be up to the number of years provided in the solicitation or as limited by statute. The option renewal year one shall be automatically renewed unless either party objects or terminates the agreement as provided herein at "Termination for Convenience". The Second one-year renewal term is only if both Parties agree.

Automatic Renewal Clauses Incorporated in Awarded Vendor Agreements with TIPS Members Resulting from the Solicitation and with the Vendor Named in this Agreement.

No Agreement for goods or services with a TIPS Member by the awarded vendor named in this Agreement that results from the solicitation award named in this Agreement, may incorporate an automatic renewal clause that exceeds month to month terms with which the TIPS Member must comply. All renewal terms incorporated in an Agreement by the vendor with the TIPS Member shall only be valid and enforceable when the vendor receives written confirmation by purchase order, executed Agreement or other written instruction issued by the TIPS Member for any renewal period. The purpose of this clause is to avoid a TIPS Member inadvertently renewing an Agreement during a period in which the governing body of the TIPS Member has not properly appropriated and budgeted the funds to satisfy the Agreement renewal. This term is not negotiable and any Agreement between a TIPS Member and a TIPS awarded vendor with an automatic renewal clause that conflicts with these terms is rendered void and unenforceable.

Shipments

The Vendor shall ship, deliver or provide ordered products or services within a commercially reasonable time after the receipt of the order from the TIPS Member. If a delay in said delivery is anticipated, the Vendor shall notify TIPS Member as to why delivery is delayed and shall provide an estimated time for completion of the order. TIPS or the requesting entity may cancel the order if estimated delivery time is not acceptable or not as agreed by the parties.

Invoices

The awarded Vendor shall submit invoices or payment requests to the TIPS Member participating entity clearly stating "Per TIPS Agreement # xxxxxx." Each invoice or pay request shall include the TIPS Member's purchase order number or other identifying designation as provided in the order or contract by the TIPS Member. If applicable, the shipment tracking number or pertinent information for verification of TIPS Member receipt shall be made available upon request.

Pricing

Price increases will be honored according to the terms of the solicitation. However, the Vendor shall honor previous prices for thirty (30) days after written notification to TIPS of an increase, except any price changes related to the, then current, RS Means Unit Price Book is valid. Price of a specific Job Order Contract proposal to a TIPS Member shall not change within 60 days of date of proposal as a result of an updated RS Means Unit Price Book

unless agreed by the TIPS Member. All pricing submitted to TIPS shall include the participation fee, as provided in the solicitation, to be remitted to TIPS by the Vendor. Vendor will not show adding the fee to the invoice presented to customer. Failure to render the participation fee to TIPS shall constitute a breach of this agreement and shall be grounds for termination of this agreement and any other agreement held with TIPS.

Participation Fees and Reporting of Sales to TIPS by Vendor

The Participation Fee that was published as part of the Solicitation and the fee published is the legally effective fee, along with any fee conditions stated in the Solicitation. Collection of the fees by TIPS is required under Texas Government Code §791.011 Et seq. Fees are due on all TIPS purchases reported by either Vendor or Member. Fees are due to TIPS upon payment by the Member to the Vendor, Reseller or Vendor Assigned Dealer. Vendor, Reseller or Vendor Assigned Dealer agrees to pay the participation fee to TIPS for all Agreement sales upon receipt of payment including partial payment, from the Member Entity or as otherwise agreed by TIPS in writing and signed by an authorized signatory of TIPS. Thus, when an awarded Vendor, Reseller or Vendor Assigned Dealer receives any amount of payment, even partial payment, for a TIPS sale, the legally effective fee for that amount is due to TIPS from the Vendor.

Reporting of Sales to TIPS by Vendor

Vendor is required to report all sales under the TIPS contract to TIPS. If the TIPS Member entity requesting a price from the awarded Vendor requests the TIPS contract, Vendor must include the TIPS Contract number on any communications with the TIPS Member entity. To report sales, the Vendor must login to the TIPS Vendor Portal online at https://www.tips-usa.com/vendors_form.cfm and click on the PO's and Payments tab. Pages 3-7 of the [Vendor Portal User Guide](#) will walk you through the process of reporting sales to TIPS. Please refer to the TIPS [Accounting FAQ's](#) for more information about reporting sales and if you have further questions, contact the Accounting Team at accounting@tips-usa.com. The Vendor or vendor assigned dealers are responsible for keeping record of all sales that go through the TIPS Agreement and submitting same to TIPS. Failure to render the participation fee to TIPS shall constitute a breach of this agreement with our parent governmental entity, Texas Education Service Center Region 8, as established by the Texas legislature and shall be grounds for termination of this agreement and any other agreement held with TIPS and possible legal action. Any overpayment of participation fees to TIPS by a Vendor will be refunded to the Vendor within ninety (90) days of receipt of notification if TIPS receives written notification of the overpayment not later than the expiration of six (6) months from the date of overpayment and TIPS determines that the amount was not legally due to TIPS pursuant to this agreement and applicable law. It is the Vendor's responsibility to identify which sales are TIPS Agreement sales and pay the correct participation fee due for TIPS Agreement sales. Any notification of overpayment received by TIPS after the expiration of six (6) months from the date of overpayment will be non-refundable. Region 8 ESC and TIPS reserve the right to extend the six (6) month deadline to notify if approved by the Region 8 ESC Board of Directors. TIPS reserves all rights under the law to collect the fees due. Please contact TIPS at tips@tips-usa.com or call (866) 839-8477 if you have questions about paying fees.

Indemnity

The Vendor agrees to indemnify and hold harmless and defend TIPS, TIPS Member(s), officers and employees from and against all claims and suits by third parties for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and reasonable attorney's fees, arising out of, or resulting from, Vendor's work under this Agreement, 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. Parties found liable shall pay their proportionate share of damages as agreed by the parties or as ordered by a court of competent jurisdiction over the case. **NO LIMITATION OF LIABILITY FOR DAMAGES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARE PERMITTED OR AGREED BY TIPS/ESC REGION 8.**

Per Texas Education Code §44.032(f), reasonable Attorney's fees

are recoverable by the prevailing party in any dispute resulting in litigation.

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

Purchase Order Pricing/Product Deviation

If a deviation of pricing/product on a purchase order or contract modification occurs, TIPS is to be notified within five (5) business days of receipt of change order.

Termination for Convenience of TIPS Agreement Only

TIPS reserves the right to terminate this agreement for cause or no cause for convenience with a thirty (30) days prior written notice. Termination for convenience is conditionally required under Federal Regulations 2 CFR part 200 if the customer is using federal funds for the procurement. All purchase orders presented to the Vendor, but not fulfilled by the Vendor, by a TIPS Member prior to the actual termination of this agreement shall be honored at the option of the TIPS Member. The awarded Vendor may terminate the agreement with ninety (90) days prior written notice to TIPS 4845 US Hwy North, Pittsburg, Texas 75686. The vendor will be paid for goods and services delivered prior to the termination provided that the goods and services were delivered in accordance with the terms and conditions of the terminated agreement. This termination clause does not affect the sales agreements executed by the Vendor and the TIPS Member customer pursuant to this agreement. TIPS Members may negotiate a termination for convenience clause that meets the needs of the transaction based on applicable factors, such as funding sources or other needs.

TIPS Member Purchasing Procedures

Usually, purchase orders or their equal are issued by participating TIPS Member to the awarded vendor and should indicate on the order that the purchase is per the applicable TIPS Agreement Number. Orders are typically emailed to TIPS at tipspo@tips-usa.com.

- Awarded Vendor delivers goods/services directly to the participating member.
- Awarded Vendor invoices the participating TIPS Member directly.
- Awarded Vendor receives payment directly from the participating member.
- Fees are due to TIPS upon payment by the Member to the Vendor. Vendor agrees to pay the participation fee to TIPS for all Agreement sales upon receipt of payment including partial payment, from the Member Entity or as otherwise agreed by TIPS in writing and signed by an authorized signatory of TIPS.

Form of Agreement and Reporting

If a vendor submitting an offer requires TIPS and/or TIPS Member to sign an additional agreement, a copy of the proposed agreement must be included with the proposal to the TIPS Member. TIPS does not require a review of a TIPS Member's Job Order contract TYPE AIA or other similar Contract provided by the TIPS Member. This clause does not relieve the Vendor from the responsibility to report the contract execution and the amount of the contract and any change orders.

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 reasonably fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of goods or services under the Agreement. TIPS and TIPS Members reserves the right to stop work and/or cancel an order or terminate this or any other sales Agreement of any awarded Vendor whose license(s) required for performance under this Agreement have expired, lapsed, are suspended or terminated subject to a 30-day cure period unless prohibited by applicable statute or regulation.

Novation

If awarded Vendor sells or transfers all assets, rights or the entire portion of the assets or rights required to perform this Agreement, a successor in interest must guarantee to perform all obligations under this Agreement. A simple change of name agreement will not change the Agreement obligations of awarded vendor. TIPS will consider Contract Assignments on a case by case basis. TIPS must be notified within five (5) business days of the transfer of assets or rights.

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

Marketing

Awarded vendor agrees to allow TIPS to use their name and logo within website, marketing materials and advertisement subject to any reasonable restrictions provided to TIPS in the Proposal to the Solicitation. Any use of TIPS name and logo or any form of publicity, inclusive of press release, regarding this Agreement by awarded vendor must have prior approval from TIPS.

Supplemental agreements

The TIPS Member entity participating in the TIPS Agreement and awarded vendor may enter into a separate supplemental agreement or contract to further define the level of service requirements over and above the minimum defined in this Agreement i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement or contract developed as a result of this Agreement is exclusively between the participating entity and awarded vendor. TIPS, its agents, TIPS Members and employees shall not be made party to any claim for breach of such agreement.

Survival Clause

All applicable software license agreements, warranties, service agreements or any supplemental agreement that were entered into between Vendor and TIPS or the TIPS Member Customer under the terms and conditions of the Agreement shall survive the expiration or termination of the Agreement. All Orders, Purchase Orders issued or contracts executed by TIPS or a TIPS Member and accepted by the Vendor prior to the expiration or termination of this agreement, shall survive expiration or termination of the Agreement, subject to previously agreed terms and conditions agreed by the parties or as otherwise specified herein relating to termination of this 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 Solicitation and any awarded Agreement thereof. Applicable laws and regulations must be followed even if not specifically identified herein.

Audit rights

Due to transparency statutes and public accountability requirements of TIPS and TIPS Members', the awarded Vendor shall, at their sole expense, maintain appropriate due diligence of all purchases made by TIPS Member that utilizes this Agreement. TIPS and Region 8 ESC each reserve the right to audit the accounting of TIPS related purchases 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. In order to ensure and confirm compliance with this agreement, TIPS shall have authority to conduct random audits of Awarded Vendor's pricing that is offered to TIPS Members with 30 days' notice unless the audit is ordered by a Court Order or by a Government Agency with authority to do so without notice. 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 to investigate any possible non-complying conduct or may terminate the Agreement according to the terms of this Agreement. In the event of an audit, the requested materials shall be reasonably 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.

Choice of Law

The Agreement between the Vendor and TIPS/ESC Region 8 and any addenda or other additions resulting from

this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles.

Venue, Jurisdiction and Service of Process

Any Proceeding arising out of or relating to this procurement process or any contract issued by TIPS resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Camp County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world. Venue for any dispute resolution process, other than litigation, between TIPS and the Vendor shall be located in Camp or Titus County, Texas.

Bonding

When applicable, performance bonds and payment bonds will be required on construction or labor required jobs. Awarded vendor will meet the TIPS Member's local and state purchasing requirements. Awarded vendors may need to provide additional capacity as jobs increase. Bonds costs are passed through at cost to the TIPS Member and are not subject to the TIPS Participation fee be paid to TIPS. The actual cost of the bond will be a pass through to the TIPS Member and added to the purchase order or Contract.

Professional Engineering and Architect's Services

Professional Engineering and Architect's Services are not permitted to be provided under this Agreement. Texas statutes prohibit the procurement of Professional Engineering and Architect's Services through a cooperative agreement.

Scope of Services

The specific scope of work for each job shall be determined in advance and in writing between TIPS Member, Member's design professionals and Vendor. It is permitted for the TIPS Member to provide a general scope description, but the awarded vendor should provide a written scope of work, and if applicable, according to the TIPS Member's design Professional as part of the proposal. Once the scope of the job is agreed to, the TIPS Member will issue a PO and/or an Agreement or Contract with the Job Order Contract Proposal referenced or as an attachment along with bond and any other special provisions agreed by the TIPS Member. If special terms and conditions other than those covered within this solicitation and awarded Agreements are required, they will be attached to the PO and/or an Agreement or Contract and shall take precedence over those in this base TIPS Vendor Agreement.

Project Delivery Order Procedures

The TIPS Member having approved and signed an interlocal agreement, or other TIPS Membership document, may make a request of the awarded vendor under this Agreement when the TIPS 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 TIPS Member as soon as possible, but must make contact with the TIPS Member within two working days.

Scheduling of Projects

Scheduling of projects (if applicable) may be accomplished when the TIPS Member issues a Purchase Order and/or an Agreement or Contract that will serve as “the notice to proceed” as agreed by the Vendor and the TIPS Member. 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 TIPS Member or a designated representative of the TIPS Member inspect the work for acceptance under the scope and terms in the Purchase Order and/or Agreement or Contract. The TIPS Member will issue in writing any corrective actions that are required. Upon completion of these items, the TIPS Member will issue a completion notice and final payment will be issued per the contractual requirements of the project with the TIPS Member. Any Construction contract prepared by the TIPS Member’s Legal Counsel may alter the terms of this subsection, “Scheduling of Projects”.

Support Requirements

If there is a dispute between the awarded vendor and TIPS Member, TIPS or its representatives may assist, at TIPS sole discretion, 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.

Status of TIPS Members as Related to This Agreement

TIPS Members stand in the place of TIPS as related to this agreement and have the same access to the proposal information and all related documents. TIPS Members have all the same rights under the awarded Agreement as TIPS.

Incorporation of Solicitation

The TIPS Solicitation, whether a Request for Proposals, the Request for Competitive Sealed Proposals or Request for Qualifications solicitation, the Vendor’s response to same and all associated documents and forms made part of the solicitation process, including any addenda, that resulted in the execution of this agreement are hereby incorporated by reference into this agreement as if copied verbatim.

SECTION HEADERS OR TITLES

THE SECTION HEADERS OR TITLES WITHIN THIS DOCUMENT ARE MERELY GUIDES FOR CONVENIENCE AND ARE NOT FOR CLASSIFICATION OR LIMITING OF THE RESPONSIBILITIES OF THE PARTIES TO THIS DOCUMENT.

NEW STATUTORY REQUIREMENT EFFECTIVE SEPTEMBER 1, 2017.

You certify that your company (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Agreement. Texas governmental entities are prohibited from doing business with companies that fail to certify to this condition as required by Texas Government Code Sec. 2270.

You certify that your company is not listed on and we do not do business with companies that are on the Texas Comptroller of Public Accounts list of Designated Foreign Terrorists Organizations per Texas Gov’t Code 2270.0153 found at <https://comptroller.texas.gov/purchasing/docs/foreign-terrorist.pdf>

You certify that pursuant to Texas Business and Commerce Code Chapter 272, as revised September 1, 2017, any construction contract or agreement as defined in the Statute with a TIPS, Education Service Center Region 8 or a Texas TIPS Member subject to the Statute shall include a Choice of Law provision providing that this agreement shall be subject to and interpreted by the Laws of the State of Texas without regard to any conflict of laws principles

for any action shall be in a court of competent jurisdiction in Texas and any arbitration shall be in the State of Texas. Pursuant to the Texas Business and Commerce Code, as amended by the 85th Texas Legislature, this Construction Agreement for Job Order Contract services is, in the event of a dispute between the parties, subject to interpretation according to the Laws of the state of Texas only, without regard to any conflict of laws principles. Venue for any alternative dispute resolution procedure or process shall be in the state of Texas. If the dispute is litigated, venue and jurisdiction shall be in a court of competent jurisdiction in the state of Texas.

Pursuant to 85th Texas Legislative H.B. 3270, as it applies to Texas Education Code § 22.0834 et seq, the Vendor shall comply with all relevant sections related to student contact, background checks, fingerprinting and other related requirements.

It is the intent of TIPS to award to reliable, high performance vendors to supply products and services 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.

- **Agreements:**

All vendor Purchase Orders and/or Agreements/Contracts must be emailed to TIPS at 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 email above within three business days and confirm its receipt with TIPS.

- **Promotion of Agreement:**

It is agreed that Vendor will encourage all eligible entities to purchase from the TIPS Program. Encouraging entities to purchase directly from the Vendor, bypassing the TIPS Agreement when the Member has requested the TIPS agreement is a violation of the terms and conditions of this Agreement and will result in removal of the Vendor from the TIPS Program.

TIPS Vendor Agreement Signature Form

RFP 200201 Trades Labor and Materials (JOC)

Company Name K-Con, Inc.

Address 2728 Spruill Avenue

City N. Charleston State SC Zip 29407

Phone 8943-745-0434 Fax 843-745-0436

Email of Authorized Representative info@kconinc.com

Name of Authorized Representative Pat Kiernan

Title President

Signature of Authorized Representative 

Date 2/31/2020

TIPS Authorized Representative Name Meredith Barton

Title Chief Operating Officer

TIPS Authorized Representative Signature 

Approved by ESC Region 8 

Date 4/30/2020

NOTICE TO MEMBERS REGARDING ATTRIBUTE RESPONSES

TIPS VENDORS RESPOND TO ATTRIBUTE QUESTIONS AS PART OF TIPS COMPETITIVE SOLICITATION PROCESS. THE VENDOR'S RESPONSES TO ATTRIBUTE QUESTIONS ARE INCLUDED HEREIN AS "SUPPLIER RESPONSE." PLEASE BE ADVISED THAT DEVIATIONS, IF ANY, IN VENDOR'S RESPONSE TO ATTRIBUTE QUESTIONS MAY NOT REFLECT VENDOR'S FINAL ATTRIBUTE RESPONSE, WHICH IS SUBJECT TO NEGOTIATIONS PRIOR TO AWARD. PLEASE CONTACT THE TIPS OFFICE AT 866-839-8477 WITH QUESTIONS OR CONCERNS REGARDING VENDOR ATTRIBUTE RESPONSE DEVIATIONS. PLEASE KEEP IN MIND THAT TIPS DOES NOT PROVIDE LEGAL COUNSEL TO MEMBERS. TIPS RECOMMENDS THAT YOU CONSULT YOUR LEGAL COUNSEL WHEN EXECUTING CONTRACTS WITH OR MAKING PURCHASES FROM TIPS VENDORS.



200201 Addendum 3

K Con Inc

Supplier Response

Event Information

Number: 200201 Addendum 3
Title: Trades, Labor and Materials (JOC)
Type: Request for Proposal
Issue Date: 2/6/2020
Deadline: 4/3/2020 03:00 PM (CT)
Notes: If your company currently has a Job Order Contracting (181101) **it is not necessary or beneficial to you to respond to this solicitation as your current contracts allow you to perform the same work as this new solicitation would permit.** Unless and if you wish to bid different terms, pricing or otherwise change from your existing contract, Job Order Contracting (181101), proposing on the current solicitation provides no additional benefits to your company.

Dear potential TIPS Vendor,
As you review the solicitation information, you are probably looking for detailed job specifications and a scope of work for which to submit a proposal. Because of the way TIPS and most other purchasing cooperatives procure contracts, there is no specific project to award. TIPS awards an IDIQ contract, where IDIQ is an abbreviation of the term "Indefinite Delivery/Indefinite Quantity". This is a type of contract that provides for an indefinite quantity of supplies or services during a fixed period of time or life of the awarded agreement. This

RCSP/solicitation was issued as a prospective award for a pricing agreement to be used when a TIPS member entity needs the goods or services offered under the agreement in the different categories of solicitations. If you have any additional questions, please don't hesitate to reach out to us here at TIPS!

Contact Information

Contact: Jensen Mabe, Construction Program Manager
Address: Region VIII Education Service Center
4845
Pittsburg, TX 75686
Phone: +1 (903) 438-6237
Fax: +1 (866) 839-8472
Email: bids@tips-usa.com

K Con Inc Information

Address: 2728 Spruill Avenue
N. Charleston, SC 29405
Phone: (843) 745-0434
Fax: (843) 745-0436
Toll Free: (800) 394-5266

By submitting your response, you certify that you are authorized to represent and bind your company.

Annalee DeMerell

Signature

Submitted at 3/24/2020 10:27:35 AM

ademerell@kconinc.com

Email

Supplier Note

I hope that you find this response satisfactory. Please don't hesitate to request additional information or further clarification. We look forward to more contracts with TIPS! Thanks!

Requested Attachments

Vendor Agreement

200201 Vendor Agreement JOC.pdf

The vendor must download the Vendor Agreement from the attachment tab, fill in the requested information and upload the completed agreement.

DO NOT UPLOAD encrypted or password protected files.

Agreement Signature Form

Vendor Agreement sig.pdf

If you have not taken exception or deviation to the agreement language in the solicitation attributes, download the AGREEMENT SIGNATURE FORM from the "ATTACHMENTS" tab. This PDF document is a fillable form. Download the document to your computer, fill in the requested company information, print the file, SIGN the form, SCAN the completed and signed AGREEMENT SIGNATURE FORM, and upload here.

If you have taken exception to any of the agreement language and noted the exception in the deviations section of the attributes for the agreement, complete the AGREEMENT SIGNATURE FORM, but DO NOT SIGN until those deviations have been negotiated and resolved with TIPS management. Upload the unsigned form here, because this is a required document.

Pricing Spreadsheet

200201 Pricing Form.xlsx

The vendor must download the PRICING SPREADSHEET SHEET from the attachment tab, fill in the requested information and upload the completed spreadsheet.

DO NOT UPLOAD encrypted or password protected files.

RS Means Pricing Form JOC

Pricing Exhibit.pdf

The vendor must download the "RS Means JOC PRICING_FORM" from the attachment tab, fill in the requested information and upload the completed agreement. DO NOT FAIL TO COMPLETE ALL SECTIONS AND BLANKS IN THE FORM OR IT COULD RENDER YOUR RESPONSE INVALID.

DO NOT UPLOAD encrypted or password protected files.

Xactimate Pricing JOC Form

No response

Should you choose to provide optional Xactimate pricing on you should upload that form here

References

Reference Form JOC.xls

Valid Reference Email addresses are REQUIRED on the spreadsheet. The vendor must download the References spreadsheet from the attachment tab, fill in the requested information and upload the completed spreadsheet. DO NOT UPLOAD encrypted or password protected files.

Proposed Goods and Services

K-CON GSA Brochure.pdf

Please upload one or more documents or sheets describing your offerings, line cards, catalogs, links to offerings OR list links to your offerings that illustrate the catalog of proposed lines of goods and or services you carry and offer under this proposal. It does not have to be exhaustive but should, at a minimum tell us what you are offering. It could be as simple as a sheet with your link to your online catalog of goods and services.

D/M/WBE Certification OPTIONAL

No response

D/M/WBE Certification documentation may be scanned and uploaded if you desire to claim your status as one of the identified enterprises. (Disadvantaged Business Enterprise, Minority Business Enterprise and/or Woman Business Enterprise) If vendor has more than one certification scan into one document. (PDF Format ONLY)
DO NOT UPLOAD encrypted or password protected files.

HUB Certification OPTIONAL

No response

Completion of the HUB Subcontracting Plan Form is OPTIONAL. THE FORM INFORMATION HAS NO EFFECT ON YOUR EVALUATION SCORE. IT IS INFORMATIONAL ONLY. Some Texas State agencies and Universities require it be a part of the file when determining if they can use a TIPS contract. If you choose to complete one, it is not project specific but the general plan the vendor would use. Complete it as best you can. Vendor can download the HUB Subcontracting Plan Form from the "Attachments" tab and upload their HUB Subcontracting Plan Form.

Warranty

Warranty.pdf

Warranty information (if applicable) must be scanned and uploaded. (PDF Format ONLY)
DO NOT UPLOAD encrypted or password protected files.

Supplementary

K-CON Capability Statement.pdf

Supplementary information can be scanned and uploaded. (Company information, brochures, catalogs, etc.) (PDF Format ONLY)
DO NOT UPLOAD encrypted or password protected files.

All Other Certificates

No response

All Other Certificates (if applicable) must be scanned and uploaded. If vendor has more than one other certification scan into one document. (PDF Format ONLY)
DO NOT UPLOAD encrypted or password protected files.

Logo and Other Company Marks

K-Con logo.jpg

Please upload your company logo to be added to your individual profile page on the TIPS website. If any particular specifications are required for use of your company logo, please upload that information under the "Logo and Other Company Marks" section under the "Response Attachment" tab. Preferred Logo Format: 350 x 350 pixel - .png, .eps, .jpg preferred.

Conflict of Interest Form CIQ- ONLY REQUIRED IF A CONFLICT EXISTS PER THE INSTRUCTIONS

No response

ONLY REQUIRED IF A CONFLICT EXISTS PER THE INSTRUCTIONS
Conflict of Interest Form for Vendors that are required to submit the form. The Conflict of Interest Form is included in the Base documents or can be found at <https://www.tips-usa.com/assets/documents/docs/CIQ.pdf>.

Certificate of Corporate Offerer - COMPLETE ONLY IF OFFERER IS A CORPORATION

Certification of Corporate officer with seal.pdf

COMPLETE AND UPLOAD FORM IN ATTACHMENTS SECTION ONLY IF OFFERER IS A CORPORATION

Lobbying Report Standard Form-LLL, "disclosure Form to Report Lobbying,"

No response

If you answered "I HAVE Lobbied per above" to attribute #66, please download and complete and upload the Standard Form-LLL, "disclosure Form to Report Lobbying," in the Response attachments section.

Confidentiality Form

Confidentiality form.pdf

REQUIRED CONFIDENTIALITY FORM. Complete the form according to your company requirements, make any desired attachments and upload to the appropriate section under "Response Attachments" THIS FORM DETERMINES HOW ESC8/TIPS RESPONDS TO LEGAL PUBLIC INFORMATION REQUESTS.

Attach the Bonding Capacity Letter from Surety/Insurance Company. If you do not have one available at time of proposal, attached a letter stating it will be submitted when received to prove bonding capacity. No award can be made until official bonding capacity letter is received by TIPS.

Bid Attributes

1	Yes - No Disadvantaged/Minority/Women Business Enterprise - D/M/WBE (Required by some participating governmental entities) Vendor certifies that their firm is a D/M/WBE? Vendor must upload proof of certification to the "Response Attachments" D/M/WBE CERTIFICATES section. <input type="text" value="No"/>
2	Yes - No Historically Underutilized Business - HUB (Required by some participating governmental entities) Vendor certifies that their firm is a HUB as defined by the State of Texas at https://comptroller.texas.gov/purchasing/vendor/hub/ or in a HUBZone as defined by the US Small Business Administration at https://www.sba.gov/offices/headquarters/ohp Proof of one or both may be submitted. Vendor must upload proof of certification to the "Response Attachments" HUB CERTIFICATES section. <input type="text" value="No"/>
3	Yes - No The Vendor can provide services and/or products to all 50 US States? <input type="text" value="Yes"/>
4	States Served: If answer is NO to question #3, please list which states can be served. (Example: AR, OK, TX) <input type="text" value="No response"/>
5	Company and/or Product Description: This information will appear on the TIPS website in the company profile section, if awarded a TIPS contract. (Limit 750 characters.) <input type="text" value="K-Con, Inc. is a design-build general contractor providing turnkey pre-engineered metal buildings and modular facilities to include full site work, installation, and interior finishes."/>
6	Primary Contact Name Primary Contact Name <input type="text" value="Annalee R. DeMerell"/>
7	Primary Contact Title Primary Contact Title <input type="text" value="Marketing Manager/GSA Contract Administrator"/>
8	Primary Contact Email Primary Contact Email <input type="text" value="ademerell@kconinc.com"/>

9	Primary Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input style="width: 90%;" type="text" value="843-745-0434 x222"/>
10	Primary Contact Fax Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input style="width: 90%;" type="text" value="843-745-0436"/>
11	Primary Contact Mobile Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input style="width: 90%;" type="text" value="No response"/>
12	Secondary Contact Name Secondary Contact Name <input style="width: 90%;" type="text" value="Pat Kiernan"/>
13	Secondary Contact Title Secondary Contact Title <input style="width: 90%;" type="text" value="President"/>
14	Secondary Contact Email Secondary Contact Email <input style="width: 90%;" type="text" value="pkiernan@kconinc.com"/>
15	Secondary Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input style="width: 90%;" type="text" value="843-745-0434 x209"/>
16	Secondary Contact Fax Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input style="width: 90%;" type="text" value="843-745-0436"/>
17	Secondary Contact Mobile Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input style="width: 90%;" type="text" value="No response"/>
18	Admin Fee Contact Name Admin Fee Contact Name. This person is responsible for paying the admin fee to TIPS. <input style="width: 90%;" type="text" value="Eric Combs"/>

19	Admin Fee Contact Email Admin Fee Contact Email <input type="text" value="ecombs@kconinc.com"/>
20	Admin Fee Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="843-745-0434 x210"/>
21	Purchase Order Contact Name Purchase Order Contact Name. This person is responsible for receiving Purchase Orders from TIPS. <input type="text" value="Ed Kirsch"/>
22	Purchase Order Contact Email Purchase Order Contact Email <input type="text" value="ekirsch@kconinc.com"/>
23	Purchase Order Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="843-745-0434"/>
24	Company Website Company Website (Format - www.company.com) <input type="text" value="www.kconinc.com"/>
25	Federal ID Number: Federal ID Number also known as the Employer Identification Number. (Format - 12-3456789) <input type="text" value="57-0901806"/>
26	Primary Address Primary Address <input type="text" value="2728 Spruill Avenue"/>
27	Primary Address City Primary Address City <input type="text" value="N. Charleston"/>
28	Primary Address State Primary Address State (2 Digit Abbreviation) <input type="text" value="South Carolina"/>
29	Primary Address Zip Primary Address Zip <input type="text" value="29405"/>

30

Search Words:

Please list search words to be posted in the TIPS database about your company that TIPS website users might search. Words may be product names, manufacturers, or other words associated with the category of award. YOU MAY NOT LIST NON-CATEGORY ITEMS. (Limit 500 words) (Format: product, paper, construction, manufacturer name, etc.)

metal building, pre-engineered metal buildings, PEMB, steel buildings, pre-engineered building, preengineered, pre engineered, design-build, design build, turn-key, storage building, school building, maintenance building, construction, guard booth,

31

Do you want TIPS Members to be able to spend Federal grant funds with you if awarded? Is it your intent to be able to sell to our members regardless of the fund source, whether it be local, state or federal?

Most of our members receive Federal Government grants and they make up a significant portion of their budgets. The members need to know if your company is willing to sell to them when they spend federal budget funds on their purchase. There are attributes that follow that are provisions from the federal regulations in 2 CFR part 200. Your answers will determine if your award will be designated as Federal or Education Department General Administrative Regulations (EDGAR)compliant.

Do you want TIPS Members to be able to spend Federal grant funds with you if awarded and is it your intent to be able to sell to our members regardless of the fund source, whether it be local, state or federal?

32

Yes - No

Certification of Residency (Required by the State of Texas) The vendor's ultimate parent company or majority owner:

(A) has its principal place of business in Texas;

OR

(B) employs at least 500 persons in Texas?

33

Company Residence (City)

Vendor's principal place of business is in the city of?

34

Company Residence (State)

Vendor's principal place of business is in the state of?

35

TIPS administration fee

By submitting a proposal, I agree that all pricing submitted to TIPS shall include the participation fee, as designated in the solicitation or as otherwise agreed in writing and shall be remitted to TIPS by the Vendor as agreed in the Vendor agreement. I agree that the fee shall not and will not be added by the vendor as a separate line item on a TIPS member invoice, quote, proposal or any other written communications with the TIPS member.

3
6**Yes - No**

Vendor agrees to remit to TIPS the required administration fee?

TIPS/ESC Region 8 is required by Texas Government Code § 791 to be compensated for its work and thus, failure to agree shall render your response void and it will not be considered.

3
7**Regular Hours Coefficient**

What is your regular hours coefficient for the RS Means Price Book?

Example:

A 5% discount for the RS Means Price Book would be a .95 regular hours coefficient.

Remember that this is a ceiling discount. You can discount lower than the contract coefficient, but not higher.

3
8**After Hours Coefficient**

What is your after hours coefficient for the RS Means Price Book for work performed after normal working hours?

Example:

The most common after hours coefficient is time and a half. If your regular hours coefficient is .95, your after hours coefficient would be 1.45.

Remember that this is a ceiling discount. You can discount lower than the contract coefficient, but not higher.

3
9**Non-Pre-Priced Markup**

If the material being utilized for a project cannot be found in the RS Means Price Book, what is your materials markup?

Remember that this is a ceiling markup. You may markup a lesser percentage, but not a greater percentage.

4
0**Yes - No**

Do you offer additional discounts to TIPS members for large order quantities or large scope of work?

4
1**Years Experience**

Company years experience in this category?

4
2**Right of Refusal**

Does the proposing vendor wish to reserve the right not to perform under the awarded agreement with a TIPS member at vendor's discretion?

4
3**NON-COLLUSIVE BIDDING CERTIFICATE**

By submission of this bid or proposal, the Bidder certifies that:

- 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.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered.

4
4**CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ -Do you have any CONFLICT OF INTEREST TO REPORT OR DISCLOSE under this statutory requirement?**

Do you have any CONFLICT OF INTEREST TO REPORT OR DISCLOSE under this statutory requirement? YES or NO

If you have a conflict of interest as described in this form or the Local Government Code Chapter 176, cited therein- you are required to complete and file with TIPS.

You may find the Blank CIQ form on our website at:

Copy and Paste the following link into a new browser or tab:

<https://www.tips-usa.com/assets/documents/docs/CIQ.pdf>

There is an optional upload for this form provided if you have a conflict and must file the form.

4
5**Filing of Form CIQ**

If yes (above), have you filed a form CIQ by uploading the form to this RFP as directed above?

4
6**Regulatory Standing**

I certify to TIPS for the proposal attached that my company is in good standing with all governmental agencies Federal or state that regulate any part of our business operations. If not, please explain in the next attribute question.

4
7**Regulatory Standing**

Regulatory Standing explanation of no answer on previous question.

Antitrust Certification Statements (Tex. Government Code § 2155.005)

By submission of this bid or proposal, the Bidder certifies that:

I affirm under penalty of perjury of the laws of the State of Texas that:

(1) I am duly authorized to execute this contract on my own behalf or on behalf of the company, corporation, firm, partnership or individual (Company) listed below;

(2) In connection with this bid, neither I nor any representative of the Company has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;

(3) In connection with this bid, neither I nor any representative of the Company has violated any federal antitrust law;

(4) Neither I nor any representative of the Company has directly or indirectly communicated any of the contents of this bid to a competitor of the Company or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Company.

Suspension or Debarment Instructions

Instructions for Certification:

1. By answering yes to the next Attribute question below, the vendor and prospective lower tier participant is providing the certification set out herein in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participants," "person," "primary covered transaction," "principal," "proposal" and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.

50

Suspension or Debarment Certification

By answering yes, you certify that no federal suspension or debarment is in place, which would preclude receiving a federally funded contract as described above.

Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

By answering yes, you certify that no federal suspension or debarment is in place, which would preclude receiving a federally funded contract as described above.

51

Non-Discrimination Statement and Certification

In accordance with Federal civil rights law, all U.S. Departments, including the U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [How to File a Program Discrimination Complaint](#) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

(Title VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities)

All U.S. Departments, including the USDA are equal opportunity provider, employer, and lender.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. I certify that in the performance of a contract with TIPS or its members, that our company will conform to the foregoing anti-discrimination statement and comply with the cited and all other applicable laws and regulations.

5 2 2 CFR PART 200 Contract Provisions Explanation

Required Federal contract provisions of Federal Regulations for Contracts for contracts with ESC Region 8 and TIPS Members:

The following provisions are required to be in place and agreed if the procurement is funded in any part with federal funds.

The ESC Region 8 and TIPS Members are the subgrantee or Subrecipient by definition. Most of the provisions are located in 2 CFR PART 200 - Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards at 2 CFR PART 200. Others are included within 2 CFR part 200 et al.

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

5 3 2 CFR PART 200 Contracts

Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Notice: Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members 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?

5 4 2 CFR PART 200 Termination

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 the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members 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. ESC Region 8 and TIPS Members 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. The vendor would be compensated for work performed and goods procured as of the termination date if for convenience of the ESC Region 8 and TIPS Members. Any award under this procurement process is not exclusive and the ESC Region 8 and TIPS reserves the right to purchase goods and services from other vendors when it is in the best interest of the ESC Region 8 and TIPS.

Does vendor agree?

5
5**2 CFR PART 200 Clean Air Act**

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to the Clean Air Act, et al above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires that the proposer certify that during the term of an award by the ESC Region 8 and TIPS Members resulting from this procurement process the vendor agrees to comply with all of the above regulations, including all of the terms listed and referenced therein.

Does vendor agree?

5
6**2 CFR PART 200 Byrd Anti-Lobbying Amendment**

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that during the term and during the life of any contract with ESC Region 8 and TIPS Members resulting from this procurement process the vendor certifies to the terms included or referenced herein.

Does vendor agree?

5
7**2 CFR PART 200 Federal Rule**

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 the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members 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 certify that it is in compliance with the Clean Air Act?

58 2 CFR PART 200 Procurement of Recovered Materials

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Does vendor certify that it is in compliance with the Solid Waste Disposal Act as described above?

59 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.

60 Lobbying Report Standard Form-LLL, "disclosure Form to Report Lobbying,"

ONLY IF you answered "I HAVE Lobbied per above" to attribute #59, please download and complete and upload the Standard Form-LLL, "disclosure Form to Report Lobbying," in the Response attachments section.

61 Subcontracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

Do you ever anticipate the possibility of subcontracting any of your work under this award if you are successful?

IF NO, DO NOT ANSWER THE NEXT ATTRIBUTE QUESTION. . IF YES, and ONLY IF YES, you must answer the next question YES if you want a TIPS Member to be authorized to spend Federal Grant Funds for Procurement.

6
2

ONLY IF YES TO THE PREVIOUS QUESTION OR if you ever do subcontract any part of your performance under the TIPS Agreement, do you agree to comply with the following federal requirements?

ONLY IF YES TO THE ABOVE QUESTIONS OR if you ever do subcontract any part of your performance under the TIPS Agreement,

do you agree to comply with the following federal requirements?

Federal Regulation 2 CFR §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. (a)The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce ; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs(1) through (5) of this section.

YES

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3

Davis-Bacon Act compliance.

Texas Statute requires compliance with Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part S, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act {40 U.S.C. 314S), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

BY SUBMITTING A PROPOSAL FOR THIS SOLICITATION, the Vendor agrees, AS REQUIRED BY LAW, to comply with the Davis Bacon Act, IF APPLICABLE.

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Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

By submitting a proposal to this solicitation and IF the customer is utilizing federal funds as described above, the Vendor agrees to comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).

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Indemnification

The ESC Region 8 and TIPS is a Texas Political Subdivision and a local governmental entity; therefore, is prohibited from indemnifying third parties pursuant to the Texas Constitution (Article 3, Section 52) except as specifically provided by law or as ordered by a court of competent jurisdiction. A provision in a contract to indemnify or hold a party harmless is a promise to pay for any expenses the indemnified party incurs, if a specified event occurs, such as breaching the terms of the contract or negligently performing duties under the contract. Article III, Section 49 of the Texas Constitution states that "no debt shall be created by or on behalf of the State ... " The Attorney General has counseled that a contractually imposed obligation of indemnity creates a "debt" in the constitutional sense. Tex. Att'y Gen. Op. No. MW-475 (1982). Contract clauses which require the System or institutions to indemnify must be deleted or qualified with "to the extent permitted by the Constitution and Laws of the State of Texas." Liquidated damages, attorney's fees, waiver of vendor's liability, and waiver of statutes of limitations clauses should also be deleted or qualified with "to the extent permitted by the Constitution and laws of State of Texas."

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms?

Yes

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6

Remedies

The parties shall be entitled to exercise any right or remedy available to it either at law or in equity, subject to the choice of law, venue and service of process clauses limitations agreed herein. Nothing in this agreement shall commit the TIPS to an arbitration resolution of any disagreement under any circumstances. Any Claim arising out of or related to the Contract, except for those specifically waived under the terms of the Contract, may, after denial of the Board of Directors, be subject to mediation at the request of either party. Any issues not resolved hereunder MAY be referred to non-binding mediation to be conducted by a mutually agreed upon mediator as a prerequisite to the filing of any lawsuit over such issue(s). The parties shall share the mediator's fee and any associated filing fee equally. Mediation shall be held in Camp or Titus County, Texas. Agreements reached in mediation shall be reduced to writing, and will be subject to the approval by the District's Board of Directors, signed by the Parties if approved by the Board of Directors, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

Do you agree to these terms?

Yes, I Agree

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Remedies Explanation of No Answer

No response

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Choice of Law

The agreement between the Vendor and TIPS/ESC Region 8 and any addenda or other additions resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles. THIS DOES NOT APPLY to a vendor's agreement entered into with a TIPS Member, as the Member may be located outside Texas.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms?

Yes

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9**Jurisdiction and Service of Process**

Any Proceeding arising out of or relating to this procurement process or any contract issued by TIPS resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Camp County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world. Any dispute resolution process other than litigation shall have venue in Camp County or Titus County Texas.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms?

7
0**Alternative Dispute Resolution Explanation of No Answer**7
1**Infringement(s)**

The successful vendor will be expected to indemnify and hold harmless the TIPS and its employees, officers, agents, representatives, contractors, assignees and designees from any and all third party claims and judgments involving infringement of patent, copyright, trade secrets, trade or service marks, and any other intellectual or intangible property rights attributed to or claims based on the Vendor's proposal or Vendor's performance of contracts awarded and approved.

Do you agree to these terms?

7
2**Infringement(s) Explanation of No Answer**7
3**Acts or Omissions**

The successful vendor will be expected to indemnify and hold harmless the TIPS, its officers, employees, agents, representatives, contractors, assignees and designees from and against any and all liability, actions, claims, demands or suits, and all related costs, attorney's fees and expenses arising out of, or resulting from any acts or omissions of the vendor or its agents, employees, subcontractors, or suppliers in the execution or performance of any agreements ultimately made by TIPS and the vendor.

Do you agree to these terms?

7
4**Acts or Omissions Explanation of No Answer**

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5

Contract Governance

Any contract made or entered into by the TIPS is subject to and is to be governed by Section 271.151 et seq, Tex Loc Gov't Code. Otherwise, TIPS does not waive its governmental immunities from suit or liability except to the extent expressly waived by other applicable laws in clear and unambiguous language.

Yes

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6

Payment Terms and Funding Out Clause

Payment Terms:

TIPS or TIPS members shall not be liable for interest or late payment fees on past due balances at a rate higher than permitted by the laws or regulations of the jurisdiction of the TIPS Member.

Funding Out Clause:

Vendor agrees to abide by the laws and regulations, including Texas Local Government Code § 271.903, or any statutory or regulatory limitations of the jurisdiction of any TIPS Member which governs contracts entered into by the Vendor and TIPS or a TIPS Member that requires all contracts approved by TIPS or a TIPS Member are subject to the budgeting and appropriation of currently available funds by the entity or its governing body.

See statute(s) for specifics or consult your legal counsel.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered.

Do you agree to these terms?

Yes

7 Insurance and Fingerprint Requirements Information

Insurance

If applicable and your staff will be on TIPS member premises for delivery, training or installation etc. and/or with an automobile, you must carry automobile insurance as required by law. You may be asked to provide proof of insurance.

Fingerprint

It is possible that a vendor may be subject to Chapter 22 of the Texas Education Code. The Texas Education Code, Chapter 22, Section 22.0834. Statutory language may be found at: <http://www.statutes.legis.state.tx.us/>

If the vendor has staff that meet both of these criterion:

- (1) will have continuing duties related to the contracted services; and
- (2) has or will have direct contact with students

Then you have "covered" employees for purposes of completing the attached form.

TIPS recommends all vendors consult their legal counsel for guidance in compliance with this law. If you have questions on how to comply, see below. If you have questions on compliance with this code section, contact the Texas Department of Public Safety Non-Criminal Justice Unit, Access and Dissemination Bureau, FAST-FACT at NCJU@txdps.state.tx.us and you should send an email identifying you as a contractor to a Texas Independent School District or ESC Region 8 and TIPS. Texas DPS phone number is (512) 424-2474.

See form in the next attribute to complete entitled:
Texas Education Code Chapter 22 Contractor Certification for Contractor Employees

Texas Education Code Chapter 22 Contractor Certification for Contractor Employees

Introduction: Texas Education Code Chapter 22 requires entities that contract with school districts to provide services to obtain criminal history record information regarding covered employees. Contractors must certify to the district that they have complied. Covered employees with disqualifying criminal histories are prohibited from serving at a school district.

Definitions: Covered employees: Employees of a contractor or subcontractor who have or will have continuing duties related to the service to be performed at the District and have or will have direct contact with students. The District will be the final arbiter of what constitutes direct contact with students. Disqualifying criminal history: Any conviction or other criminal history information designated by the District, or one of the following offenses, if at the time of the offense, the victim was under 18 or enrolled in a public school:

(a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state.

I certify that:

NONE (Section A) of the employees of Contractor and any subcontractors are covered employees, as defined above. If this box is checked, I further certify that Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any subcontractor will not become covered employees. Contractor will maintain these precautions or conditions throughout the time the contracted services are provided.

OR

SOME (Section B) or all of the employees of Contractor and any subcontractor are covered employees. If this box is checked, I further certify that:

(1) Contractor has obtained all required criminal history record information regarding its covered employees. None of the covered employees has a disqualifying criminal history.

(2) If Contractor receives information that a covered employee subsequently has a reported criminal history, Contractor will immediately remove the covered employee from contract duties and notify the District in writing within 3 business days.

(3) Upon request, Contractor will provide the District with the name and any other requested information of covered employees so that the District may obtain criminal history record information on the covered employees.

(4) If the District objects to the assignment of a covered employee on the basis of the covered employee's criminal history record information, Contractor agrees to discontinue using that covered employee to provide services at the District.

Noncompliance or misrepresentation regarding this certification may be grounds for contract termination.

☐ None

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Texas Business and Commerce Code § 272 Requirements as of 9-1-2017

SB 807 prohibits construction contracts to have provisions requiring the contract to be subject to the laws of another state, to be required to litigate the contract in another state, or to require arbitration in another state. A contract with such provisions is voidable. Under this new statute, a "construction contract" includes contracts, subcontracts, or agreements with (among others) architects, engineers, contractors, construction managers, equipment lessors, or materials suppliers. "Construction contracts" are for the design, construction, alteration, renovation, remodeling, or repair of any building or improvement to real property, or for furnishing materials or equipment for the project. The term also includes moving, demolition, or excavation. BY RESPONDING TO THIS SOLICITATION, AND WHEN APPLICABLE, THE PROPOSER AGREES TO COMPLY WITH THE TEXAS BUSINESS AND COMMERCE CODE § 272 WHEN EXECUTING CONTRACTS WITH TIPS MEMBERS THAT ARE TEXAS GOVERNMENT ENTITIES.

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Texas Government Code 2270 Verification Form

Texas Government Code 2270 Verification Form

Texas 2017 House Bill 89 has been signed into law by the governor and as of September 1, 2017 will be codified as Texas Government Code § 2270 and 808 et seq.

The relevant section addressed by this form reads as follows:

Texas Government Code Sec. 2270.002. PROVISION REQUIRED IN CONTRACT. A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.engaged by

ESC Region 8/The Interlocal Purchasing System (TIPS)

4845 Highway 271 North

Pittsburg,TX,75686

verify by this writing that the above-named company affirms that it (1) does not boycott Israel; and (2) will not boycott Israel during the term of this contract, or any contract with the above-named Texas governmental entity in the future. I further affirm that if our company's position on this issue is reversed and this affirmation is no longer valid, that the above-named Texas governmental entity will be notified in writing within one (1) business day and we understand that our company's failure to affirm and comply with the requirements of Texas Government Code 2270 et seq. shall be grounds for immediate contract termination without penalty to the above-named Texas governmental entity.

AND

our company is not listed on and we do not do business with companies that are on the the Texas Comptroller of Public Accounts list of Designated Foreign Terrorists Organizations per Texas Gov't Code 2270.0153 found at <https://comptroller.texas.gov/purchasing/docs/foreign-terrorist.pdf>

I swear and affirm that the above is true and correct.

YES

8
1**Logos and other company marks**

Please upload your company logo to be added to your individual profile page on the TIPS website. If any particular specifications are required for use of your company logo, please upload that information under the "Logo and Other Company Marks" section under the "Response Attachment" tab. Preferred Logo Format: 350 x 350 pixel - .png, .eps, .jpg preferred

Potential uses of company logo:

* Your Vendor Profile Page of TIPS website

* Potentially on TIPS website scroll bar for Top Performing Vendors

* TIPS Quarterly eNewsletter sent to TIPS Members

* Co-branding Flyers and or email blasts to our TIPS Members (Permission and approval will be obtained before publishing)

8
2**Felony Conviction Notice**

Texas Education Code, Section 44.034, Notification of Criminal History, Subsection (a), states "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony." Subsection (b) states "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract." (c) This section does not apply to a publicly held corporation. The person completing this proposal certifies that they are authorized to provide the answer to this question.

Select A., B. or C.

A. My firm is a publicly held corporation; therefore, this reporting requirement is not applicable.

OR B. My firm is not owned nor operated by anyone who has been convicted of a felony, OR

C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony. (if you answer C below, you are required to provide information in the next attribute.

B. Firm not owned nor operated by felon; per above

8
3**If you answered C. My Firm is owned or operated by a felon to the previous question, you are REQUIRED TO ANSWER THE FOLLOWING QUESTIONS.**

If you answered C. My Firm is owned or operated by a felon to the previous question, you must provide the following information.

1. Name of Felon(s)

2. The named person's role in the firm, and

3. Details of Conviction(s).

No response

8
4**Required Confidentiality Claim Form****Required Confidentiality Claim Form**

This form is required by TIPS. By submitting a response to this solicitation you agree to download from the "Attachments" section, complete according to the instructions on the form, then uploading the completed form, with any confidential attachments, if applicable, to the "Response Attachments" section titled "Confidentiality Form" in order to provide to TIPS the completed form titled, "CONFIDENTIALITY CLAIM FORM". By completing this process, you provide us with the information we require to comply with the open record laws of the State of Texas as they may apply to your proposal submission. If you do not provide the form with your proposal, an award will not be made if your proposal is qualified for award, until TIPS has an accurate, completed form from you.

Read the form carefully before completing and if you have any questions, email Rick Powell at TIPS at rick.powell@tips-usa.com

8
5**Choice of Law clauses for TIPS Members**

If the vendor is awarded a contract with TIPS under this solicitation, the vendor agrees to make any Choice of Law clauses in any contract or agreement entered into between the awarded vendor and with a TIPS member entity to read as follows: "Choice of law shall be the laws of the state where the customer resides" or words to that effect.

8
6**Venue of dispute resolution with a TIPS Member**

In the event of litigation or use of any dispute resolution model when resolving disputes with a TIPS member entity as a result of a transaction between the vendor and TIPS or the TIPS member entity, the Venue for any litigation or other agreed upon model shall be in the state and county where the customer resides unless otherwise agreed by the parties at the time the dispute resolution model is decided by the parties.

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7***Attribute deleted as part of an Addendum***8
8**Indemnity Limitation with TIPS Members**

Texas and other states restrict by law or state Constitution the ability of a governmental entity to indemnify others. TIPS requires that any contract entered into between a vendor and TIPS or a TIPS Member as a result of an award under this Solicitation limit the requirement that the Customer indemnify the Vendor by either eliminating any such indemnity requirement clauses in any agreements, contracts or other binding documents **OR** by prefacing all indemnity clauses required of TIPS or the TIPS Member entity with the following: "To the extent permitted by the laws or the Constitution of the state where the customer resides, ".

Agreement is a required condition to award of a contract resulting from this Solicitation.

8
9**Arbitration Clauses**

Except for certain circumstances, TIPS forbids a mandatory arbitration clause in any contract or agreement entered into between the awarded vendor with TIPS or a TIPS member entity. Does the vendor agree to exclude any arbitration requirement in any contracts or agreement entered into between TIPS or a TIPS member entity through an awarded contract with TIPS?

Agreement is a required condition to award of a contract resulting from this Solicitation.

9
0**Required Vendor Sales Reporting**

By responding to this Solicitation, you agree to report to TIPS all sales made under any awarded Agreement with TIPS. Vendor is required to report all sales under the TIPS contract to TIPS. If the TIPS Member entity requesting a price from the awarded Vendor requests the TIPS contract, Vendor must include the TIPS Contract number on any communications with the TIPS Member entity. If awarded, you will be provided access to the Vendor Portal. To report sales, login to the TIPS Vendor Portal and click on the PO's and Payments tab. Pages 3-7 of the [Vendor Portal User Guide](#) will walk you through the process of reporting sales to TIPS. Please refer to the TIPS [Accounting FAQ's](#) for more information about reporting sales and if you have further questions, contact the Accounting Team at accounting@tips-usa.com. The Vendor or vendor assigned dealers are responsible for keeping record of all sales that go through the TIPS Agreement and submitting same to TIPS.

9
1**Solicitation Deviation/Compliance**

Does the vendor agree with the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation?

9
2**Solicitation Exceptions/Deviations Explanation**

If the bidder intends to deviate from the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation, all such deviations must be listed on this attribute, with complete and detailed conditions and information included or attached.

TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any bid based upon any deviations indicated below or in any attachments or inclusions.

In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Standard Terms and Conditions, Item Specifications, and all other information contained in this Solicitation.

9
3**Agreement Deviation/Compliance**

Does the vendor agree with the language in the Vendor Agreement?

9
4**Agreement Exceptions/Deviations Explanation**

If the proposing Vendor desires to deviate from the Vendor Agreement language, all such deviations must be listed on this attribute, with complete and detailed conditions and information included. TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any proposal based upon any deviations indicated below. In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Vendor Agreement.

REFERENCES

Please provide three (3) references, preferably from school districts or other governmental entities who have used your services within the last three years. Additional references may be required. DO NOT INCLUDE TIPS EMPLOYEES AS A REFERENCE.

Please verify your references are current and valid, as they are a SIGNIFICANT required evaluation component of the evaluation process, and the evaluation cannot be completed without responses from these references when we contact them.

You may provide more than three (3) references.

[illegible]

CERTIFICATION BY CORPORATE OFFERER

COMPLETE ONLY IF OFFERER IS A CORPORATION,

THE FOLLOWING CERTIFICATE SHOULD BE EXECUTED AND INCLUDED AS PART OF PROPOSAL FORM/PROPOSAL FORM.

OFFERER: K-Con, Inc.
(Name of Corporation)

Michael Kiernan certify that I am the Secretary of the Corporation
I, (Name of Corporate Secretary)

named as OFFERER herein above; that

Pat Kiernan
(Name of person who completed proposal document)

who signed the foregoing proposal on behalf of the corporation offerer is the authorized person that is acting as

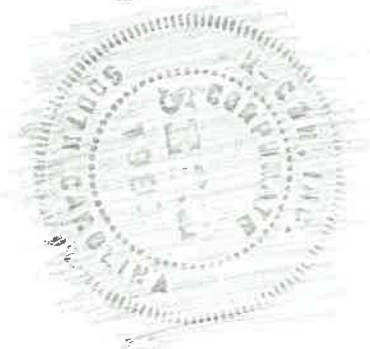
President
(Title/Position of person signing proposal/offer document within the corporation)

of the said Corporation; that said proposal/offer was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

CORPORATE SEAL if available

Michael Kiernan
SIGNATURE

3/19/2020
DATE



Required Confidential Information Status Form

CONFIDENTIAL INFORMATION SUBMITTED IN RESPONSE TO COMPETITIVE PROCUREMENT REQUESTS OF EDUCATION SERVICE CENTER REGION 8 AND TIPS (ESC8) IS GOVERNED BY TEXAS GOVERNMENT CODE, CHAPTER 552

If you consider any portion of your proposal to be confidential information and not subject to public disclosure pursuant to Chapter 552 Texas Gov't Code or other law(s), you **must attach a copy of all claimed confidential materials within your proposal and put this COMPLETED form as a cover sheet to said materials then scan, name "CONFIDENTIAL" and upload with your proposal submission.** (You must include all the confidential information in the submitted proposal. The copy uploaded is to indicate which material in your proposal, if any, you deem confidential in the event the receives a Public Information Request.) ESC8 and TIPS will follow procedures of controlling statute(s) regarding any claim of confidentiality and shall not be liable for any release of information required by law. Upon your claim and your defense to the Office of Texas Attorney General is required to make the final determination whether the information submitted by you and held by ESC8 and TIPS is confidential and exempt from public disclosure.

K-Con, Inc.

Name of company

Pat Kiernan, President

Printed Name and Title of authorized company officer declaring below the confidential status of material

2728 Spruill Avenue

N. Chareleston SC 29405

843-745-0434

Address

City

State

ZIP

Phone

ALL VENDORS MUST COMPLETE THE ABOVE SECTION.

I DO CLAIM parts of my proposal to be confidential and DO NOT desire to expressly waive a claim of confidentiality of all information contained within our response to the solicitation. The attached contains material from our proposal that I classify and deem confidential under Texas Gov't Code Sec. 552 or other law(s) and I invoke my statutory rights to confidential treatment of the enclosed materials.

ATTACHED ARE COPIES OF _____ PAGES OF CLAIMED CONFIDENTIAL MATERIAL FROM OUR PROPOSAL THAT WE DEEM TO BE NOT PUBLIC INFORMATION AND WILL DEFEND THAT CLAIM TO THE TEXAS ATTORNEY GENERAL IF REQUESTED WHEN A PUBLIC INFORMATION REQUEST IS MADE FOR OUR PROPOSAL.

Signature _____

Date March 31, 2020

OR -----

I DO NOT CLAIM any of my proposal to be confidential, complete the section below.

Express Waiver: I desire to expressly waive any claim of confidentiality as to any and all information contained within our response to the competitive procurement process (e.g. RFP, CSP, Bid, RFQ, etc.) by completing the following and submitting this sheet with our response to Education Service Center Region 8 and TIPS.

Signature _____

Date March 31, 2020



MARSH & MCLENNAN
AGENCY
Mid-Atlantic Region

Marsh & McLennan Agency LLC
Mid-Atlantic Region
5605 Carnegie Blvd., Suite 300
Charlotte, North Carolina 28209
+1 704 365 6213
www.mma-midatlantic.com

March 12, 2020

RE: K-Con, Inc.

To Whom It May Concern:


It has been the privilege of Marsh & McLennan Agency LLC to service the surety needs of K-Con, Inc. since 2005. Their bonds have been written through SureTec Insurance Company since 2016. During this time, K-Con has performed and we have issued performance and payment bonds for contracts in the \$5,000,000 range. In our opinion, K-Con, Inc. remains properly financed, well equipped and capably managed.

At the present time, SureTec Insurance Company provides a bonding capacity of \$5,000,000 for individual projects, with an aggregate capacity in the \$15,000,000 range to K-Con. As always, SureTec Insurance Company reserves the right to perform normal underwriting at the time of any bond request including, without limitation, prior review and approval of relevant contract documents, bond forms, and project financing. We assume no liability to third parties or to you if for any reason we do not execute such bonds.

SureTec Insurance Company is listed on the US Treasury Department's Listing of Approved Sureties (Department Circular 570) and is rated A by A.M. Best, with a Financial Size Category of XV.

Sincerely,

SURETEC INSURANCE COMPANY


Wendy E. Lahm
Attorney-in-Fact

/wel

cc: File

SureTec Insurance Company

LIMITED POWER OF ATTORNEY

Know All Men by These Presents, That SURETEC INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Harris County, Texas, does by these presents make, constitute and appoint

H. Thomas Dawkins, Raymond J. Garruto, Bradford W. Gibson, Martin D. Pallazza, Debra S. Ritter, Angela M. Yount, Wendy E. Lahm, Jenny Snell, Robert C. Tresher

its true and lawful Attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety for, providing the bond penalty does not exceed

Ten Million and 00/100 Dollars (\$10,000,000.00)

and to bind the Company thereby as fully and to the same extent as if such bond were signed by the CEO, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolutions of the Board of Directors of the SureTec Insurance Company:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and of behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached. (Adopted at a meeting held on 20th of April, 1999.)

In Witness Whereof, SURETEC INSURANCE COMPANY has caused these presents to be signed by its CEO, and its corporate seal to be hereto affixed this 4th day of January, A.D. 2019.



SURETEC INSURANCE COMPANY

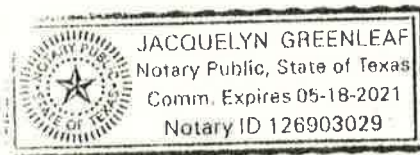
By: _____

John Knox Jr., CEO

State of Texas
County of Harris

ss:

On this 4th day of January, A.D. 2019 before me personally came John Knox Jr., to me known, who, being by me duly sworn, did depose and say, that he resides in Houston, Texas, that he is CEO of SURETEC INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.



Jacquelyn Greenleaf, Notary Public

My commission expires May 18, 2021

I, M. Brent Beaty, Assistant Secretary of SURETEC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Houston, Texas this 12th day of March, 2020, A.D.

M. Brent Beaty, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity.

For verification of the authority of this power you may call (713) 812-0800 any business day between 8:30 am and 5:00 pm CST.



Precoated SIGNATURE® 200 Panel LIMITED WARRANTY

Metal Building Components, L.P. warrants the panels, effective from the date of shipment, will perform in accordance to the following Signature® 200 Warranty:

PERFORMANCE SUMMARY

- A. **FILM INTEGRITY:** The paint film WILL NOT crack, check, or peel for a period of twenty (20) years for Sidewall and Roof panels. Cracking is defined as breaks in the flat coating as opposed to breaks in the film caused by metal forming, which is not warranted hereunder. Cracking, checking, or peeling caused by the corrosion of the metal substrate is not covered hereunder.
- B. **CHALK AND FADE:** The paint film WILL NOT chalk or fade as outlined below for a period of twenty (20) years, except for Crimson Red, in which case the period is five (5) years.
 - (1) Chalk in excess of a numerical rating of Vertical 8, Non-Vertical 7 when measured in accordance with the standard procedures as defined by the "Standard Methods of Evaluating Degree of Chalking of Exterior Paints", ASTM D4214. Polar White is not warranted for any chalk ratings.
 - (2) Fade or change in color in excess of Vertical 5, Non-Vertical 6 color difference units, measured in accordance with ASTM D2244 on the exposed painted surfaces which have been cleaned of external deposits and chalk and the corresponding values measured on the original or unexposed painted surfaces. It is understood that fading or color changes may not be uniform if the surfaces are not equally exposed to the sun and elements.

TERMS AND CONDITIONS

- 1. This warranty covers the material exposed to normal atmospheric conditions (which term excludes exposure to salt spray or corrosive or aggressive atmospheres such as, but not limited to, those contaminated with chemical fumes) in the continental United States or Canada, unless MBCI agrees otherwise in writing. This warranty shall not apply where material failure is the result of fire, other accident or casualty, vandalism, salt spray, atomic radiation, harmful fumes or foreign substances in the atmosphere, acts of God, or other such occurrences beyond MBCI's control.
- 2. This warranty will not extend to or cover damages to the material due to improper packaging, shipping or processing as specified in the National Coil Coaters Association Technical Bulletin No. IV- (7), improper handling (whether pre-erection or during erection), improper storage, improper erection, or improper installation (which includes failure to permit drainage of standing water.)
- 3. Microscopic crazing of the film on outside radii is considered normal and is not to be construed as film cracking.
- 4. This warranty does not apply in the event of deterioration to the panels caused directly or indirectly by panel contact with inferior fasteners. Selection of suitable long-lasting fasteners to be used with MBCI extended life panels rest solely with the Purchaser.
- 5. The use of seaming equipment obtained from a party other than MBCI may result in this and all warranties being void.
- 6. This warranty will not extend to or cover:
 - a) Damages to the coating occasioned by moisture or other contamination detrimental to the coating because of improper storage of the coated Metal prior to installation.
 - b) Water damage to any materials after they leave the possession of MBCI.
 - c) Damage to the prepainted metal caused by shipping, handling, and/or installation, storing, erecting and/or handling of the panels on the job site and/or any act or acts of negligence of the customer or any third party after the panels leave the possession of MBCI.
 - d) Damages to the coated Metal as a result of standing water in non-vertical application.
 - e) Damage to the prepainted metal caused by cascading water.
 - f) Damages to the coated Metal caused by contact with, or water run-off from, lead, copper, graphite or other dissimilar material. This includes A/C condensation.
 - g) Damage to the coated Metal caused by contact with corrosive substances, or allowing panel cut edges to be in continual contact with water, damp insulation, soil or vegetation i.e. setting wall panels directly on the concrete sheeting notch or base trim.
 - h) This warranty does not apply to products, materials, accessories, parts, or attachments which are not manufactured by MBCI. In addition, all items not specifically listed as included are hereby excluded from this warranty.
- 7. Customer shall exercise diligence in inspection of materials as received from MBCI prior to use so as to mitigate expense involved to MBCI under this warranty.
- 8. This warranty does not apply to the interior or reverse side finish nor does it extend to pre-painted materials used in interior (not atmospherically exposed) applications.
- 9. This warranty applies only to the paint film on the material and does not cover in any way any other aspect of the material.
- 10. If the panel finish fails to perform as indicated under the terms of Performance outlined above, MBCI shall have no liability with respect thereto except, at its sole option to repaint, replace, or restore the failed material, which shall be the purchaser's sole and exclusive remedy. When MBCI chooses to replace the defective coated Metal, its sole obligation is for the replacement of the material only. MBCI shall not be liable for any expenses connected with labor for the replacement of the defective material or any consequential damages. Repainting shall not necessarily be Signature® 200. In no event, however, shall MBCI's responsibility extend to any consequential damages, or for any special, indirect, or consequential loss of profits or any other incidental, general, special, or compensatory damages to anyone because such panels may have been nonconforming. In all cases MBCI reserves the right to approve and negotiate the contract for such repainting or restoring. The warranty on any repainted, replaced or restored coated material supplied hereunder shall be for the unexpired portion of the warranty period applicable to the original panel.

**Precoated SIGNATURE® 200 Panel
LIMITED WARRANTY**

TERMS AND CONDITIONS (CONT.)

11. Claims must be reported in writing to MBCI within thirty (30) days after discovery of nonconformance. Adequate identification of the material involved in the claim, including date of installation, MBCI order number, MBCI invoice number, and date of shipment must be established by Buyer. A copy of this document must be presented to MBCI at time of claim. All notices given under or pursuant to this Agreement shall be in writing and sent by registered mail, postage prepaid, return receipt requested to:

Metal Building Components, L.P.
P.O. Box 38217
Houston, TX 77238
Attn: Kelly Ginn/President

12. No terms or conditions other than those stated herein and no agreement or understanding, oral or written in any way purporting to modify this warranty shall be binding on MBCI unless made in writing and signed by the President of MBCI.

13. This warranty shall extend to the original Building Owner and is non-assignable and/or non-transferable. Should the Owner become insolvent, bankrupt, make an assignment for the benefit of its creditors, or for any reason discontinue its normal or regular business practices, this warranty shall forthwith become null and void and of no legal effect.

14. Any party seeking to enforce claims under this Warranty hereby acknowledges and agrees that (i) all matters relating to the validity, performance, interpretation, and/or enforcement of this Warranty shall be governed by and construed in accordance with the laws of the State of Texas, (ii) any and all claims, actions, proceedings or causes of action relating to the validity, performance, interpretation, and/or enforcement hereof must be submitted to a court of competent jurisdiction in Houston, Harris County, Texas, (iii) this Warranty is capable of being performed in Harris County, Texas, (IV) IT irrevocably submits itself to the jurisdiction of the state and federal courts in Harris County, Texas, (v) service of process may be made upon it in any legal proceeding in connection with this Warranty or any other agreement as provided by Texas law, (vi) it irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any litigation arising out of or in connection with this Warranty or any other agreement or transaction brought in any such court, (vii) it irrevocably waives any claims that litigation brought in any such court has been brought in an inconvenient forum, and (viii) it irrevocably consents to the service of process out of any of the aforementioned courts by the mailing of copies thereof by Certified Mail, Return Receipt Requested, postage prepaid, and its address set forth herein. The scope of each of the foregoing waivers is intended to be all encompassing. Each party acknowledges that this waiver is a material inducement to the agreement of each party hereto to enter into a business relationship, and that each has already relied on this waiver in entering into this Warranty. Each party warrants and represents that it has reviewed these waivers with its legal counsel, and that it knowingly and voluntarily agrees to each such waiver following consultation therewith.

15. **FORCE MAJEURE. UNDER NO CIRCUMSTANCES SHALL MBCI BE LIABLE IN ANY WAY TO THE BUILDING OWNER OR ANY OTHER PARTY FOR DELAYS, FAILURE IN PERFORMANCE, OR LOSS OR DAMAGE DUE TO FORCE MAJEURE CONDITIONS INCLUDING, WITHOUT LIMITATION: FIRE; LIGHTENING; STRIKE; EMBARGO; EXPLOSION; POWER SURGE OR FAILURE; ACTS OF GOD; WAR; LABOR OR EMPLOYMENT DISPUTES; CIVIL DISTURBANCES; ACTS OF CIVIL OR MILITARY AUTHORITY; INABILITY TO SECURE MATERIALS, FUEL, PRODUCTS OR TRANSPORTATION FACILITIES; ACTS OR OMISSIONS OF SUPPLIERS, OR ANY OTHER CAUSES BEYOND ITS REASONABLE CONTROL, WHETHER OR NOT SIMILAR TO THE FOREGOING.**

16. Notwithstanding the foregoing, the warranty coverage provided above by MBCI shall be expressly limited to and shall include only such warranty coverage on coatings applied to MBCI's panel materials by the original supplier(s) thereof. Any and all such warranty coverage available from MBCI shall apply only to the same extent that such warranty coverage is available from the original supplier thereof. To the extent that warranty coverage from such supplier(s) is unavailable for any reason whatsoever, MBCI shall not have any further liability to purchaser or any other party.

DISCLAIMER-EXCEPT AS EXPRESSLY STATED HEREIN, THE ABOVE WARRANTY PROVISIONS DO NOT COVER COATINGS, PRODUCTS, ACCESSORIES, PARTS OR ATTACHMENTS THAT ARE NOT MANUFACTURED BY MBCI. EXCEPT AS OTHERWISE EXPRESSLY STATED, THERE IS NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND AND ANY WARRANTY, EXPRESS OR IMPLIED, IS HEREBY EXCLUDED AND DISCLAIMED INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING ANYTHING ELSE CONTAINED HEREIN TO THE CONTRARY, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT MBCI'S LIABILITY AND PRUCHASER'S SOLE REMEDY, WHETHER IN CONTRACT, UNDER ANY WARRANTY, IN TORT (INCLUDING NEGLIGENCE), IN STRICT LIABILITY OR OTHERWISE SHALL NOT EXCEED THE COST OF THE AMOUNT OF THE MATERIALS, EXPRESSLY EXCLUDING LABOR COSTS AND EXPENSES, COSTS OF RENTING REPLACEMENTS AND ANY OTHER ADDITIONAL EXPENSES. UNDER NO CIRCUMSTANCES SHALL MBCI BE LIABLE FOR ANY SPECIAL, INCIDENTAL, LIQUIDATED OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY, PROPERTY DAMAGE, DAMAGE TO OR LOSS OF EQUIPMENT, LOST PROFITS OR REVENUE, LABOR COSTS AND EXPENSES, COSTS OF RENTING REPLACEMENTS AND OTHER ADDITIONAL EXPENSES, EVEN IF MBCI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MBCI WILL NOT BE LIABLE FOR ANY DAMAGES, LOSSES OR EXPENSES AS A RESULT OF PURCHASER'S (OR ANY OTHER PARTY'S) NEGLIGENCE, WHETHER DEEMED ACTIVE OR PASSIVE AND WHETHER OR NOT ANY SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH DAMAGE, LOSS OR EXPENSE. IN ADDITION, UNDER NO CIRCUMSTANCES SHALL MBCI BE LIABLE FOR ANY DAMAGES, LOSSES OR EXPENSES WHATSOEVER AS A RESULT OF ANY OTHER PARTY'S MATERIALS OR PRODUCTS WHICH CAUSE OR ALLEGEDLY CAUSE, IN WHOLE OR IN PART, DAMAGE, LOSS OR DETERIORATION TO THE MBCI ROOF SYSTEM.

Signature® is a registered trademark of Metal Building Components, L.P.

P roject Name

MBCI Job #

Color(s)

C redit Department
Metal Building Components, L.P.

Date





Metal Roof and Wall Systems

**Precoated SIGNATURE® 300 Panel
PRECOATED 70% FLUOROPOLYMER PANEL
LIMITED WARRANTY**

MBCI, a division of NCI Group, Inc. (hereinafter referred to as "Manufacturer") warrants the panels, effective from the date of shipment, will perform in accordance to the following Signature® 300 Warranty:

PERFORMANCE SUMMARY

- A. **FILM INTEGRITY:** The paint film WILL NOT crack, check, or peel for a period of twenty-five (25) years for Wall and Roof panels, except; Scarlet Red, in which case the period is twenty (20) years. Cracking is defined as breaks in the flat coating as opposed to breaks in the film caused by metal forming, which is not warranted hereunder.
- B. **CHALK AND FADE:** The paint film WILL NOT;
- (1) For a period of twenty-five (25) years, chalk in excess of a numerical rating of 8 for vertical or non-vertical panel applications when measured in accordance with the standard procedures as defined by the "Standard Methods of Evaluating Degree of Chalking of Exterior Paints", ASTM D4214, except; Scarlet Red, in which case the period is five (5) years, or
- (2) For a period of twenty-five (25) years, fade or change in color in excess of 5 color difference units, for vertical or non-vertical panel applications, measured in accordance with ASTM D2244 on the exposed painted surfaces which have been cleaned of external deposits and chalk and the corresponding values measured on the original (unexposed) painted surfaces, except; Scarlet Red, in which case the period is five (5) years. It is understood that fading or color changes may not be uniform if the surfaces are not equally exposed to the sun and elements.

TERMS AND CONDITIONS

1. This warranty covers the material exposed to normal atmospheric conditions (which term excludes exposure to salt spray or corrosive or aggressive atmospheres such as, but not limited to, those contaminated with chemical fumes, in the continental United States, Alaska or Canada, unless Manufacturer agrees otherwise in writing. This warranty shall not apply where material failure is the result of fire, other accident or casualty, vandalism, salt spray, atomic radiation, harmful fumes or foreign substances in the atmosphere, acts of God, or other such occurrences beyond Manufacturer's control.
2. This warranty will not extend to or cover damages to the material due to improper packaging, shipping or processing as specified in the National Coil Coaters Association Technical Bulletin No. IV- (7), improper handling (whether pre-erection or during erection), improper storage, improper erection, or improper installation (which includes failure to permit drainage of standing water.)
3. Microscopic crazing of the film on formed radii is considered normal and is not to be construed as film cracking.
4. This warranty does not apply in the event of deterioration to the panels caused directly or indirectly by panel contact with inferior fasteners. Selection of suitable long-lasting fasteners to be used with Manufacturer's extended life panels rests solely with the Purchaser.
5. The improper use of Manufacturer's seaming equipment or use of seaming equipment obtained from a party other than the Manufacturer may result in this and all warranties being void.
6. This warranty will not extend to or cover:
 - a) Damage to the coating occasioned by moisture or other contamination detrimental to the coating because of improper storage of the coated Metal prior to installation.
 - b) Water damage to any materials after they leave the possession of the Manufacturer.
 - c) Damage to the prepainted metal caused by shipping, handling, and/or installation, storing, erecting and/or handling of the panels on the job site and/or any act or acts of negligence of the customer or any third party after the panels leave the possession of the Manufacturer.
 - d) Damage to the coated Metal as a result of standing water in non-vertical application.
 - e) Damage to the prepainted metal caused by cascading water.
 - f) Damage to the coated Metal caused by contact with, or water run-off from, lead, copper, graphite or other dissimilar material. This includes, but is not limited to, A/C condensation and treated wood.
 - g) Damage to the coated Metal caused by contact with corrosive substances, or allowing panel cut edges to be in continual contact with water, damp insulation, soil or vegetation i.e. setting wall panels directly on the concrete sheeting notch or base trim.
 - h) This warranty does not apply to products, materials, accessories, parts, or attachments which are not produced by the Manufacturer. In addition, all items not specifically listed as included are hereby excluded from this warranty.
7. Customer shall exercise diligence in inspection of materials as received from Manufacturer prior to use so as to mitigate expense involved to Manufacturer under this warranty.
8. This warranty does not apply to the interior or reverse side finish nor does it extend to pre-painted materials used in interior (not atmospherically exposed) applications.
9. This warranty applies only to the paint film on the material and does not cover in any way any other aspect of the material.
10. If the panel finish fails to perform as indicated under the terms of Performance outlined above, Manufacturer shall have no liability with respect thereto except, at its sole option to repaint, replace, or restore the failed material, which shall be the purchaser's sole and exclusive remedy. When Manufacturer chooses to replace the defective coated Metal, its sole obligation is for the replacement of the material only. Manufacturer shall not be liable for any expenses connected with labor for the replacement of the defective material or any consequential damages. Repainting shall not necessarily be with 70% PVF2/PVDF. In no event, however, shall Manufacturer's responsibility extend to any consequential damages, or for any special, indirect, or consequential loss of profits or any other incidental, general, special, or compensatory damages to anyone because such panels may have been nonconforming. In all cases Manufacturer reserves the right to approve and negotiate the contract for such repainting or restoring. The warranty on any repainted, replaced or restored coated material supplied hereunder shall be for the unexpired portion of the warranty period applicable to the original coated material.

Precoated SIGNATURE® 300 Panel
PRECOATED 70% FLUOROPOLYMER PANEL LIMITED WARRANTY

TERMS AND CONDITIONS (CONT.)

11. Claims must be reported in writing to Manufacturer within thirty (30) days after discovery of nonconformance. Adequate identification of the material involved in the claim, including date of installation, Manufacturer order number, Manufacturer invoice number, and date of shipment must be established by Buyer. A copy of this document must be presented to Manufacturer at time of claim. All notices given under or pursuant to this Agreement shall be in writing and sent by registered mail, postage prepaid, return receipt requested to:

NCI Group, Inc.
P.O. Box 602055
Houston, TX 77269-2055
Attn: Claims Department

12. No terms or conditions other than those stated herein and no agreement or understanding, oral or written in any way purporting to modify this warranty shall be binding on Manufacturer unless made in writing and signed by the President of Manufacturer.
13. This warranty shall extend to the original Building Owner and is non-assignable and/or non-transferable. Should the Owner become insolvent, bankrupt, make an assignment for the benefit of its creditors, or for any reason discontinue its normal or regular business practices, this warranty shall forthwith become null and void and of no legal effect.
14. Any party seeking to enforce claims under this Warranty hereby acknowledges and agrees that (i) all matters relating to the validity, performance, interpretation, and/or enforcement of this Warranty shall be governed by and construed in accordance with the laws of the State of Texas, (ii) any and all claims, actions, proceedings or causes of action relating to the validity, performance, interpretation, and/or enforcement hereof must be submitted to a court of competent jurisdiction in Houston, Harris County, Texas, (iii) this Warranty is capable of being performed in Harris County, Texas, (iv) it irrevocably submits itself to the jurisdiction of the state and federal courts in Harris County, Texas, (v) service of process may be made upon it in any legal proceeding in connection with this Warranty or any other agreement as provided by Texas law, (vi) it irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any litigation arising out of or in connection with this Warranty or any other agreement or transaction brought in any such court, (vii) it irrevocably waives any claims that litigation brought in any such court has been brought in an inconvenient forum, and (viii) it irrevocably consents to the service of process out of any of the aforementioned courts by the mailing of copies thereof by Certified Mail, Return Receipt Requested, postage prepaid, and its address set forth herein. The scope of each of the foregoing waivers is intended to be all encompassing. Each party acknowledges that this waiver is a material inducement to the agreement of each party hereto to enter into a business relationship, and that each has already relied on this waiver in entering into this Warranty. Each party warrants and represents that it has reviewed these waivers with its legal counsel, and that it knowingly and voluntarily agrees to each such waiver following consultation therewith.
15. **FORCE MAJEURE. UNDER NO CIRCUMSTANCES SHALL MANUFACTURER BE LIABLE IN ANY WAY TO THE BUILDING OWNER OR ANY OTHER PARTY FOR DELAYS, FAILURE IN PERFORMANCE, OR LOSS OR DAMAGE DUE TO FORCE MAJEURE CONDITIONS INCLUDING, WITHOUT LIMITATION: FIRE; LIGHTNING; STRIKE; EMBARGO; EXPLOSION; POWER SURGE OR FAILURE; ACTS OF GOD; WAR; LABOR OR EMPLOYMENT DISPUTES; CIVIL DISTURBANCES; ACTS OF CIVIL OR MILITARY AUTHORITY; INABILITY TO SECURE MATERIALS, FUEL, PRODUCTS OR TRANSPORTATION FACILITIES; ACTS OR OMISSIONS OF SUPPLIERS, OR ANY OTHER CAUSES BEYOND ITS REASONABLE CONTROL, WHETHER OR NOT SIMILAR TO THE FOREGOING.**
16. Notwithstanding the foregoing, the warranty coverage provided above by Manufacturer shall be expressly limited to and shall include only such warranty coverage on coatings applied to Manufacturer's panel materials by the original supplier(s) thereof. Any and all such warranty coverage available from Manufacturer shall apply only to the same extent that such warranty coverage is available from the original supplier thereof. To the extent that warranty coverage from such supplier(s) is unavailable for any reason whatsoever, Manufacturer shall not have any further liability to purchaser or any other party.

DISCLAIMER-EXCEPT AS EXPRESSLY STATED HEREIN, THE ABOVE WARRANTY PROVISIONS DO NOT COVER COATINGS, PRODUCTS, ACCESSORIES, PARTS OR ATTACHMENTS THAT ARE NOT PRODUCED BY MANUFACTURER. EXCEPT AS OTHERWISE EXPRESSLY STATED, THERE IS NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND AND ANY WARRANTY, EXPRESS OR IMPLIED, IS HEREBY EXCLUDED AND DISCLAIMED INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING ANYTHING ELSE CONTAINED HEREIN TO THE CONTRARY, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT MANUFACTURER'S LIABILITY AND PURCHASER'S SOLE REMEDY, WHETHER IN CONTRACT, UNDER ANY WARRANTY, IN TORT (INCLUDING NEGLIGENCE), IN STRICT LIABILITY OR OTHERWISE SHALL NOT EXCEED THE COST OF THE AMOUNT OF THE MATERIALS, EXPRESSLY EXCLUDING LABOR COSTS AND EXPENSES, COSTS OF RENTING REPLACEMENTS AND ANY OTHER ADDITIONAL EXPENSES. UNDER NO CIRCUMSTANCES SHALL MANUFACTURER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, LIQUIDATED OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY, PROPERTY DAMAGE, DAMAGE TO OR LOSS OF EQUIPMENT, LOST PROFITS OR REVENUE, LABOR COSTS AND EXPENSES, COSTS OF RENTING REPLACEMENTS AND OTHER ADDITIONAL EXPENSES, EVEN IF MANUFACTURER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MANUFACTURER WILL NOT BE LIABLE FOR ANY DAMAGES, LOSSES OR EXPENSES AS A RESULT OF PURCHASER'S (OR ANY OTHER PARTY'S) NEGLIGENCE, WHETHER DEEMED ACTIVE OR PASSIVE AND WHETHER OR NOT ANY SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH DAMAGE, LOSS OR EXPENSE. IN ADDITION, UNDER NO CIRCUMSTANCES SHALL MANUFACTURER BE LIABLE FOR ANY DAMAGES, LOSSES OR EXPENSES WHATSOEVER AS A RESULT OF ANY OTHER PARTY'S MATERIALS OR PRODUCTS WHICH CAUSE OR ALLEGEDLY CAUSE, IN WHOLE OR IN PART, DAMAGE, LOSS OR DETERIORATION TO THE MANUFACTURER'S WALL AND/OR ROOF PANELS.

Signature® is a registered trademark of NCI Group, Inc.

Project Name _____

Manufacturer's Job # _____

Color(s) _____

Authorized Representative _____

Date _____



Precoated SIGNATURE® 200 Panel LIMITED WARRANTY

MBCI, a division of NCI Group, Inc. (hereinafter referred to as "Manufacturer") warrants the panels, effective from the date of shipment, will perform in accordance to the following Signature® 200 Warranty:

PERFORMANCE SUMMARY

- A. **FILM INTEGRITY:** The paint film WILL NOT crack, check, or peel for a period of twenty-five (25) years for Wall and Roof panels, except; Crimson Red, in which case the period is twenty (20) years. Cracking is defined as breaks in the flat coating as opposed to breaks in the film caused by metal forming, which is not warranted hereunder.
- B. **CHALK AND FADE:** The paint film WILL NOT;
 - (1) For a period of twenty-five (25) years, chalk in excess of a numerical rating of 8 for vertical panel applications or 6 for non-vertical panel applications, when measured in accordance with the standard procedures as defined by the "Standard Methods of Evaluating Degree of Chalking of Exterior Paints", ASTM D4214, except; Crimson Red, in which case the period is five (5) years, Polar White, in which case this warranty for chalk does not apply, or
 - (2) For a period of twenty-five (25) years, fade or change in color in excess of 5 color difference units for vertical panel applications or 7 color difference units for non-vertical panel applications, measured in accordance with ASTM D2244 on the exposed painted surfaces which have been cleaned of external deposits and chalk and the corresponding values measured on the original (unexposed) painted surfaces, except; Crimson Red, in which case the period is five (5) years. It is understood that fading or color changes may not be uniform if the surfaces are not equally exposed to the sun and elements.

TERMS AND CONDITIONS

- 1. This warranty covers the material exposed to normal atmospheric conditions (which term excludes exposure to salt spray or corrosive or aggressive atmospheres such as, but not limited to, those contaminated with chemical fumes) in the continental United States, Alaska or Canada, unless Manufacturer agrees otherwise in writing. This warranty shall not apply where material failure is the result of fire, other accident or casualty, vandalism, salt spray, atomic radiation, harmful fumes or foreign substances in the atmosphere, acts of God, or other such occurrences beyond Manufacturer's control.
- 2. This warranty will not extend to or cover damages to the material due to improper packaging, shipping or processing as specified in the National Coil Coaters Association Technical Bulletin No. IV- (7), improper handling (whether pre-erection or during erection), improper storage, improper erection, or improper installation (which includes failure to permit drainage of standing water.)
- 3. Microscopic crazing of the film on formed radii is considered normal and is not to be construed as film cracking.
- 4. This warranty does not apply in the event of deterioration to the panels caused directly or indirectly by panel contact with inferior fasteners. Selection of suitable long-lasting fasteners to be used with Manufacturer's extended life panels rests solely with the Purchaser.
- 5. The improper use of Manufacturer's seaming equipment or use of seaming equipment obtained from a party other than the Manufacturer may result in this and all warranties being void.
- 6. This warranty will not extend to or cover:
 - a) Damage to the coating occasioned by moisture or other contamination detrimental to the coating because of improper storage of the coated Metal prior to installation.
 - b) Water damage to any materials after they leave the possession of the Manufacturer.
 - c) Damage to the prepainted metal caused by shipping, handling, and/or installation, storing, erecting and/or handling of the panels on the job site and/or any act or acts of negligence of the customer or any third party after the panels leave the possession of the Manufacturer.
 - d) Damage to the coated Metal as a result of standing water in non-vertical application.
 - e) Damage to the prepainted metal caused by cascading water.
 - f) Damage to the coated Metal caused by contact with, or water run-off from, lead, copper, graphite or other dissimilar material. This includes, but is not limited to, A/C condensation and treated wood.
 - g) Damage to the coated Metal caused by contact with corrosive substances, or allowing panel cut edges to be in continual contact with water, damp insulation, soil or vegetation i.e. setting wall panels directly on the concrete sheeting notch or base trim.
 - h) This warranty does not apply to products, materials, accessories, parts, or attachments which are not produced by the Manufacturer. In addition, all items not specifically listed as included are hereby excluded from this warranty.
- 7. Customer shall exercise diligence in inspection of materials as received from Manufacturer prior to use so as to mitigate expense involved to Manufacturer under this warranty.
- 8. This warranty does not apply to the interior or reverse side finish nor does it extend to pre-painted materials used in interior (not atmospherically exposed) applications.
- 9. This warranty applies only to the paint film on the material and does not cover in any way any other aspect of the material.
- 10. If the panel finish fails to perform as indicated under the terms of Performance outlined above, Manufacturer shall have no liability with respect thereto except, at its sole option to repaint, replace, or restore the failed material, which shall be the purchaser's sole and exclusive remedy. When Manufacturer chooses to replace the defective coated Metal, its sole obligation is for the replacement of the material only. Manufacturer shall not be liable for any expenses connected with labor for the replacement of the defective material or any consequential damages. Repainting shall not necessarily be with Signature® 200. In no event, however, shall Manufacturer's responsibility extend to any consequential damages, or for any special, indirect, or consequential loss of profits or any other incidental, general, special, or compensatory damages to anyone because such panels may have been nonconforming. In all cases Manufacturer reserves the right to approve and negotiate the contract for such repainting or restoring. The warranty on any repainted, replaced or restored coated material supplied hereunder shall be for the unexpired portion of the warranty period applicable to the original coated material.

**Precoated SIGNATURE® 200 Panel
LIMITED WARRANTY**

TERMS AND CONDITIONS (CONT.)

11. Claims must be reported in writing to Manufacturer within thirty (30) days after discovery of nonconformance. Adequate identification of the material involved in the claim, including date of installation, Manufacturer order number, Manufacturer invoice number, and date of shipment must be established by Buyer. A copy of this document must be presented to Manufacturer at time of claim. All notices given under or pursuant to this Agreement shall be in writing and sent by registered mail, postage prepaid, return receipt requested to:

NCI Group, Inc.
P.O. Box 602055
Houston, TX 77269-2055
Attn: Claims Department

12. No terms or conditions other than those stated herein and no agreement or understanding, oral or written in any way purporting to modify this warranty shall be binding on Manufacturer unless made in writing and signed by the President of Manufacturer.
13. This warranty shall extend to the original Building Owner and is non-assignable and/or non-transferable. Should the Owner become insolvent, bankrupt, make an assignment for the benefit of its creditors, or for any reason discontinue its normal or regular business practices, this warranty shall forthwith become null and void and of no legal effect.
14. Any party seeking to enforce claims under this Warranty hereby acknowledges and agrees that (i) all matters relating to the validity, performance, interpretation, and/or enforcement of this Warranty shall be governed by and construed in accordance with the laws of the State of Texas, (ii) any and all claims, actions, proceedings or causes of action relating to the validity, performance, interpretation, and/or enforcement hereof must be submitted to a court of competent jurisdiction in Houston, Harris County, Texas, (iii) this Warranty is capable of being performed in Harris County, Texas, (iv) it irrevocably submits itself to the jurisdiction of the state and federal courts in Harris County, Texas, (v) service of process may be made upon it in any legal proceeding in connection with this Warranty or any other agreement as provided by Texas law, (vi) it irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any litigation arising out of or in connection with this Warranty or any other agreement or transaction brought in any such court, (vii) it irrevocably waives any claims that litigation brought in any such court has been brought in an inconvenient forum, and (viii) it irrevocably consents to the service of process out of any of the aforementioned courts by the mailing of copies thereof by Certified Mail, Return Receipt Requested, postage prepaid, and its address set forth herein. The scope of each of the foregoing waivers is intended to be all encompassing. Each party acknowledges that this waiver is a material inducement to the agreement of each party hereto to enter into a business relationship, and that each has already relied on this waiver in entering into this Warranty. Each party warrants and represents that it has reviewed these waivers with its legal counsel, and that it knowingly and voluntarily agrees to each such waiver following consultation therewith.
15. **FORCE MAJEURE. UNDER NO CIRCUMSTANCES SHALL MANUFACTURER BE LIABLE IN ANY WAY TO THE BUILDING OWNER OR ANY OTHER PARTY FOR DELAYS, FAILURE IN PERFORMANCE, OR LOSS OR DAMAGE DUE TO FORCE MAJEURE CONDITIONS INCLUDING, WITHOUT LIMITATION: FIRE; LIGHTNING; STRIKE; EMBARGO; EXPLOSION; POWER SURGE OR FAILURE; ACTS OF GOD; WAR; LABOR OR EMPLOYMENT DISPUTES; CIVIL DISTURBANCES; ACTS OF CIVIL OR MILITARY AUTHORITY; INABILITY TO SECURE MATERIALS, FUEL, PRODUCTS OR TRANSPORTATION FACILITIES; ACTS OR OMISSIONS OF SUPPLIERS, OR ANY OTHER CAUSES BEYOND ITS REASONABLE CONTROL, WHETHER OR NOT SIMILAR TO THE FOREGOING.**
16. Notwithstanding the foregoing, the warranty coverage provided above by Manufacturer shall be expressly limited to and shall include only such warranty coverage on coatings applied to Manufacturer's panel materials by the original supplier(s) thereof. Any and all such warranty coverage available from Manufacturer shall apply only to the same extent that such warranty coverage is available from the original supplier thereof. To the extent that warranty coverage from such supplier(s) is unavailable for any reason whatsoever, Manufacturer shall not have any further liability to purchaser or any other party.

DISCLAIMER-EXCEPT AS EXPRESSLY STATED HEREIN, THE ABOVE WARRANTY PROVISIONS DO NOT COVER COATINGS, PRODUCTS, ACCESSORIES, PARTS OR ATTACHMENTS THAT ARE NOT PRODUCED BY MANUFACTURER. EXCEPT AS OTHERWISE EXPRESSLY STATED, THERE IS NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND AND ANY WARRANTY, EXPRESS OR IMPLIED, IS HEREBY EXCLUDED AND DISCLAIMED INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING ANYTHING ELSE CONTAINED HEREIN TO THE CONTRARY, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT MANUFACTURER'S LIABILITY AND PURCHASER'S SOLE REMEDY, WHETHER IN CONTRACT, UNDER ANY WARRANTY, IN TORT (INCLUDING NEGLIGENCE), IN STRICT LIABILITY OR OTHERWISE SHALL NOT EXCEED THE COST OF THE AMOUNT OF THE MATERIALS, EXPRESSLY EXCLUDING LABOR COSTS AND EXPENSES, COSTS OF RENTING REPLACEMENTS AND ANY OTHER ADDITIONAL EXPENSES. UNDER NO CIRCUMSTANCES SHALL MANUFACTURER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, LIQUIDATED OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY, PROPERTY DAMAGE, DAMAGE TO OR LOSS OF EQUIPMENT, LOST PROFITS OR REVENUE, LABOR COSTS AND EXPENSES, COSTS OF RENTING REPLACEMENTS AND OTHER ADDITIONAL EXPENSES, EVEN IF MANUFACTURER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MANUFACTURER WILL NOT BE LIABLE FOR ANY DAMAGES, LOSSES OR EXPENSES AS A RESULT OF PURCHASER'S (OR ANY OTHER PARTY'S) NEGLIGENCE, WHETHER DEEMED ACTIVE OR PASSIVE AND WHETHER OR NOT ANY SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH DAMAGE, LOSS OR EXPENSE. IN ADDITION, UNDER NO CIRCUMSTANCES SHALL MANUFACTURER BE LIABLE FOR ANY DAMAGES, LOSSES OR EXPENSES WHATSOEVER AS A RESULT OF ANY OTHER PARTY'S MATERIALS OR PRODUCTS WHICH CAUSE OR ALLEGEDLY CAUSE, IN WHOLE OR IN PART, DAMAGE, LOSS OR DETERIORATION TO THE MANUFACTURER'S WALL AND/OR ROOF PANELS.

Signature® is a registered trademark of NCI Group, Inc.

Project Name

Manufacturer's Job #

Color(s)

Authorized Representative

Date

WHY GSA?

Federal Supply Schedule 56 Contract #GS-07F-0216L



*Experience counts -
K-Con has completed more than
350 projects through GSA!*

K-CON
BUILDING SYSTEMS

GSA Schedule
Contract GS-07F-0216L

*K-Con is a design-build general contractor
specializing in turn-key building solutions
for the federal government*

and

*The #1 provider of Metal Buildings
on GSA!*

EMAIL: INFO@KCONINC.COM | PHONE: 800-394-5266 | WWW.KCONINC.COM

*Analysis conclusively shows that... **K-Con is the only firm capable of providing all 17 of these SINs***
Ask to see the comparison chart!

Prefabricated Structures, Roofing, Warehouse Equipment, Installation & Site Preparation

Contract period: Contract
expires April 2021
08/01/2006 - 04/30/2021
Business Size: **Small**
K-Con, Inc.
P.O. Box 70904
Charleston, SC 29415

Toll-free: **800.394.5266**
Telephone: **843.745.0434**
Fax: **843.745.0436**

E-mail: **info@KConInc.com**
Website: **www.KConInc.com**
Tax ID: **57-0901806**
DUNS: **186428231**
Cage Code: **OKES7**

When placing orders under Federal Supply Schedules, **ordering offices need not seek further competition**, synopsise the requirement, make a separate determination of fair and reasonable pricing, or consider small business set-asides. **GSA has already determined the prices of items under schedule contracts to be fair and reasonable.** By placing an order against a schedule using accepted procedures, the ordering office has concluded that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs.

CATEGORY SPECIAL ITEM NUMBER (SIN)

361-10A Pre-Engineered and Prefabricated Buildings and Structures for Storage Solutions

Includes, but not limited to: storage containers, warehousing structures, hazardous/chemical storage, energy/power shelters, communications shelters, garages, portable vehicle tents, car ports, aircraft hangars, maintenance shelters, vehicle inspection stations, equipment shelters, barns, sheds, freight/shipping containers, portable workshops, and mobile containers. May be wood, fiberglass, steel, aluminium, metal, tension fabric or other membrane material, pre-cast concrete and includes accessories and options



361-10B Pre-Engineered and Prefabricated Buildings and Structures for In-Plant Solutions

Including, but not limited to, in-plant offices, modular wall/partition systems and enclosures, mezzanines and wire partitions and enclosures, fire and sound panels, clean room enclosures, including accessories and options



361-10D Pre-Engineered and Prefabricated Buildings and Structures for Military, Disaster/Emergency Response, and Medical Facility Solutions

Includes, but not limited to: Mobility systems for logistics support, operation/command centers, temporary living quarters and portable barracks, rapid deployment and operations shelters for support operations, expandable shelter systems, military vans, guard towers, bunkers, checkpoints, medical tents and facilities, deployment systems storage, and includes accessories and options



361-10E Pre-Engineered and Prefabricated Buildings and Structures for Professional Facility Solutions

Includes, but not limited to: Offices, classrooms, laboratories, exhibition halls and other professional facilities. May be mobile, modular, tension fabric or membrane structures, pre-cast concrete, pre-engineered, skid-mounted, trailer-mounted, and includes accessories and options



361-10G Pre-Engineered and Prefabricated Buildings and Structures for Outdoor Shelter and Security Shelter Solutions

Includes, but not limited to: Guard houses/booths (with or without bullet resistance), ticket/cashier booths, parking attendant booths, smoking shelters, bus shelters, and concession stands. May be mobile, modular, pre-assembled, unassembled, pre-cast concrete, wood, metal, aluminium, steel, tension fabric or membrane, and includes accessories and options



www.kconinc.com
800-394-5266

Most items are suitable for support of emergency and disaster recovery efforts

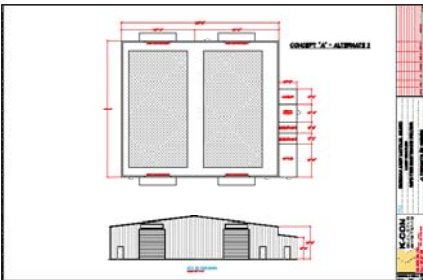
361-10H Pre-Engineered and Prefabricated Buildings and Structures for Restroom, Shower, and Laundry

Includes, but not limited to: Portable or stationary restroom or restroom/shower buildings; restroom and shower trailers; restroom facilities such as porta-potties, portable toilets and handicap accessible, ADA compliant, restroom facilities; comfort stations, mobile laundry facilities; pre-cast concrete restrooms; and includes accessories and options



361-30 Ancillary Services relating to Pre-Engineered/Prefabricated Buildings and Structures

Including services relating to and ordered in conjunction with products purchased under the supply schedule contract, such as, field assembly, training, consultation and design assistance.



361-32 Installation and Site Preparation for Pre-Engineered/Prefabricated Buildings and Structures

Applicable to installation and site preparation services ordered in conjunction with buildings and structures purchased under the supply schedule contract.



357-11C Warehouse Equipment and Supplies

Including, but not limited to, storage systems, storage racks, conveyors and conveyor systems, conveyor belts, slings, hooks, rope, chain, webbing, and material handling options and accessories such as strapping, shrink wrap, sealer, sealing iron, load binder, cord, and twine.



357-97 Ancillary Repair and Alterations related to Warehouse Equipment Solutions

Repair and Alterations ancillary to existing SINs under this Schedule. Ancillary Repair and Alterations projects are those (1) solely associated with the repair, alteration, delivery or installation of products or services also purchased under this Schedule, and which are (2) routine and non-complex in nature, such as routine painting or resurfacing of floors, simple hanging of drywall, basic electrical or plumbing work, removal/relocation of non-load bearing walls, minor alterations to install storage systems, conveyors or conveyor systems, and similar noncomplex services.

563-4 Roofing Materials, Products and Services

Including sustainable, energy efficient/savings solutions, and installation and site preparation, related to and ordered in conjunction with products for repair or replacement of an existing roof.



563-23 Doors, Windows, Panels, Skylights Panels Shutters

Including, but not limited to, Energy Star, energy efficient, energy savings, sustainable, interior and exterior, residential and commercial, security doors and windows, security/bullet resistant panels, metal doors, patio doors, strip doors, overhead doors, garage doors, warehouse doors, screen doors, storm doors, wood doors and door frames, and options and accessories and associated hardware offered in conjunction with doors, shutters, and windows.



WHY GSA?

**General Services Administration
Federal Supply
Schedule Contract**

K-Con and GSA provides Federal agencies with the opportunity to make a simple "Best Value Determination" and subsequently place the order directly with a selected contractor. GSA does not require purchasing activities to accept the lowest price, or even obtain more than one price. This is because **GSA has already negotiated the pricing and determined that the pricing practices for GSA contract holders are fair and reasonable.** For this reason, an order placed with a GSA contract holder is deemed to have been placed under full and open competition.

K-Con can provide a complete, turn-key building system, all through an existing GSA contract.



Simplified Acquisition & Expedited Design-Build Project Delivery

563-98 Ancillary Services related to Building Materials/Supplies

And ordered in conjunction with products (other than roofing products ordered under SIN 563 4) purchased under the supply schedule contract. Services include but are not limited to: set up, installation, training and/or design assistance.



412-50 Ancillary Service Related to Alternative Energy Solutions and Power Distribution

Commercial services related to and ordered in conjunction with products purchased under the supply Schedule contract. Including, but not limited to, services such as simple installation (design through startup), maintenance, and training.



206-3 Alternative and Renewable Sustainable Energy Solutions, Including Solar Energy Systems, Fuel Cells, Geothermal, and Wind Power

Includes all types of solar energy solutions, such as prepackaged PV and solar thermal systems, solar water pumping systems, and solar water heaters; including rental, options, parts and accessories. Includes, but not limited to, fuel cells, hydrogen based energy systems, wind energy systems, geothermal energy solutions, and other environmentally sustainable renewable energy generation systems; including rental, options, parts and accessories.



412-51 Installation and Site Preparation Services for Alternative Energy Solutions and Power Distribution Equipment

Relating to and ordered in conjunction with products purchased under the supply Schedule contract, including installation and site preparation which requires construction.



412-52 Power Systems Engineering Support for Alternative Energy Solutions and Power Distribution Equipment

Including, but not limited to, consulting, program management, engineering, technical, data management, and administrative support. Services offered must be in support of alternative energy solutions, power systems and related products only.

WHO and HOW?

All Federal Agencies and Procurement Activities are authorized to utilize simplified acquisition through GSA and are encouraged by the Small Business Administration (SBA) to take advantage of the opportunities afforded by the program.

Delivery Orders - The scope of the GSA contract identified herein is nationwide. Delivery requirements will be stipulated on individual Delivery Orders. Task Orders are prepared by a Government Ordering Officer (a duly warranted Contracting Officer whose warrant authorizes purchases from the GSA Schedules) in accordance with the terms and conditions of this BPA, the GSA Schedules, and FAR 8.4.

Ordering Methods – Task Orders are placed directly with K-Con in accordance with published ordering procedures (reference FAR 8.4). Orders can be placed via E-Mail, paper or fax, SF1449, or Department of Defense (DD) Form 1155, or by telephone using Government Wide Credit Card. These options are subject to local policy. In addition to the use of the Government Wide Credit Card, organizations may place orders subject to invoice and payment through Government Paying Offices. Government Wide Card Holders – Call K-Con at 800-394-5266. SF1449 Orders – Process SF1449's through the servicing base contracting office.

K-Con will provide you with a budget estimate and drawing for your next project.



GSA# GS-07F-0216L **CAGE CODE:** OKES7 **DUNS:** 186428231 **TAX ID:** 57-0901806

CAPABILITY STATEMENT



*A design/build general contractor
specializing in turn-key building solutions
for the federal government*

K-Con, Inc. is a SBA **Small Business**
with more than 25 years of experience



2728 Spruill Avenue
Charleston, SC 29405
P.O. Box 70904
Charleston, SC 29415

800-394-5266 toll free
843-745-0434 phone
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info@kconinc.com

GSA# GS-07F-0216L CAGE CODE: 0KES7 DUNS: 186428231 TAX ID: 57-0901806

www.KConInc.com



WHY K-CON, INC?

Design/Build Solutions

K-Con is a **full-service design-build** general contractor, specializing in building solutions. K-Con's goal is to provide the "Method and the Mechanism" to get jobs done — **faster, easier, cheaper... period** — without the costly fees of an architect.

Turn-Key Construction

K-Con will design and manage all aspects of your project, from start to finish, with **single-point responsibility**.

Simplified Acquisition

Many of K-Con's projects are completed through our existing **GSA contract**, which is meticulously audited to ensure K-Con's customers are receiving the Best Value and best pricing available.

Geography

K-Con works in all 54 states and territories. Customers deal directly with K-Con headquarters, and have **full time, K-Con supervisory personnel on site** for every project.

Customers

K-Con conducts the vast predominance of its work for the Federal Government. K-Con understands the critical and vital importance of an **efficient, safe, quality driven, and reliable** contractor that can comply with Government procurement and construction regulations, and is in tune with the requirements of Federal agencies.

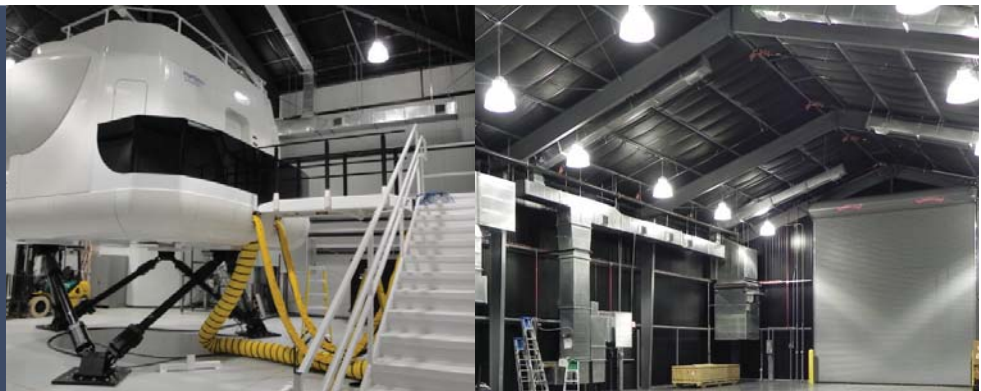
Experience

142 National Guard customers can't be wrong.



MEMBERSHIPS

Design Build Institute of America
Society of American Military Engineers
U.S. Green Building Council
U.S. Chamber of Commerce
Charleston Chamber of Commerce
LEED® Accredited





EXPERTISE AREAS

PROJECT TYPES

- Maintenance & Workshops
- Training Facilities & Range Towers
- Offices & Administration
- Warehouses & Storage
- Renovation & Roofing
- Guard Booths
- Residences
- Wood Frame
- Fire Stations
- Specialized projects (Classrooms, Gyms, Medical Facilities)

AWARDS

Top 100 Metal Builders 2009 - 2015, Metal Construction News

The Blue Chip Enterprise Award 1998, MassMutual and the U.S. Chamber of Commerce.

Top 25 Fastest Growing Companies of SC 2004 and 2005, SC Chamber of Commerce

Why Design/Build?

Design/Build facilitates a true team approach to both final design and construction, by closely integrating input from end user, builder and designer at the onset and during all phases of the project.

ADVANTAGES:

Design/build projects typically result in **6-10% cost savings** while completing projects an **average of 33% faster**.

The design/build process **promotes close communications** and a partnering effort between owner, builder and designer, thus avoiding conflicts.

Overall responsibility for the project falls to one source—the design/builder. There is no separate architectural services contract.

Precise, up-front definition of the design with the consensus of all team members, virtually eliminates costly change orders and modifications during construction.

Concurrent activities — construction on initial phases can begin while final designs and finish decisions continue without undue delay.

K-Con's experience with Government clients provides facility solutions that meet mission requirements and budgets. K-Con understands Government/Military needs.





SIMPLIFIED ACQUISITION

Consider Simplified Acquisition Design/Build to fast track your project.

K-Con has contracting methods available that will save both time and money while controlling your construction costs up front. Your project can go turn-key and you can have it awarded in less than 30 days. Ask us how.

ON THE JOB

K-Con provides their customers with hands-on execution. Working nationwide no matter where you need us, K-Con places a certified employee superintendent for your project's duration keeping your interests represented.



GSA Schedule Reduce Time and Cost

All of K-Con's design/build construction services are available through our existing GSA contract. K-Con can provide a complete turn-key project, all through GSA. The average time to place a GSA order is 15 days.



SHOVEL READY DESIGNS

K-Con has a portfolio of facilities available for download from the website. Mark up the drawings and return them to K-Con for a modified 10% drawing and scope of work. You could have a turn-key facility contracted for in 5 days.

Order not only building systems, but the design and engineering services.



