



## **NOTICE OF PROPOSAL INVITATION**

**Proposal Name:** Transportation Fuels (Unleaded Gasoline and Diesel Fuel)

**Proposal Number:** TEC 109-26

**Proposal Due Date and Time:** June 11, 2026, at 2:00 p.m.

**Contract Term:** September 1, 2026, to August 31, 2027, with four (4) possible one-year renewal terms

**Projected Contract Award Date:** July 2026

**\*Please make sure that you have either downloaded and/or printed all sections of this Proposal Invitation.**

- 1. Notice of Proposal Invitation**
- 2. PART ONE: Fixed-Rate Fuels, including Attachment 1**
- 3. PART TWO: Rack Rate and Index-Priced Fuels**
- 4. Proposal Forms**

The TASB Energy Cooperative ("Energy Cooperative" or "Cooperative"), 12007 Research Blvd., Austin, Texas 78759, is a statewide cooperative for school districts, junior colleges, cities, counties, and other political subdivisions in the State of Texas. The Energy Cooperative is administered by the Texas Association of School Boards, Inc. ("TASB"), a nonprofit corporation of the State of Texas located at 12007 Research Blvd., Austin, Texas 78759.

The Cooperative is issuing this Proposal Invitation for qualified vendors interested in serving Cooperative members with the purchase of **Transportation Fuels (Unleaded Gasoline and Diesel Fuel)** (collectively "Fuel" or "Fuels"). This Proposal Invitation seeks Proposals for both fixed-rate Fuels and Fuels priced based on rack rate or index pricing as set out in the Proposal Invitation documents.

- **PART ONE** - Provides information and sets forth the requirements for the Fixed-Rate Fuel Program.
- **PART TWO** - Provides information and sets forth the requirements for Rack Rate and Index Priced Fuels.

Proposals must be submitted in accordance with the "Proposal Submission Requirements" specified herein. Proposers may submit Proposals for only **PART ONE**, the Fixed-Rate Fuel Program, **PART TWO** for rack rate and index priced Fuels, or **BOTH**. **All Proposers, whether submitting a proposal for PART ONE, PART TWO, or BOTH, must complete and return all forms in the Proposal Forms section of this Proposal Invitation. If a Proposer fails to complete and return all Proposal Forms, the Proposal will not be considered.**

Questions, requests for information or clarification, or comments regarding this Proposal Invitation, including the specifications, must be submitted in writing, addressed as indicated below, and received by the Cooperative no later than the 10<sup>th</sup> business day before the Proposal Due Date. Only questions received in writing will receive a response; therefore, questions regarding this Proposal Invitation shall be addressed to:

Texas Association of School Boards, Inc.  
Attn: Ava Benford, Department Director, Cooperative Purchasing  
Postal Address: P.O. Box 400, Austin, TX 78767-0400  
Physical Address: 12007 Research Blvd., Austin, TX 78759  
E-Mail: [Ava.Benford@tasb.org](mailto:Ava.Benford@tasb.org)

## **PROPOSAL INVITATION No. TEC 109-26**

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## **PROPOSAL SUBMISSION REQUIREMENTS**

Proposers that wish to be considered for a Cooperative contract award to provide **Transportation Fuels (Unleaded Gasoline and Diesel Fuel)** to Cooperative members ("Members" or "Cooperative members") must submit a complete Proposal to the Cooperative Administrator, TASB, that complies with the requirements of this Proposal Invitation and includes all required information, including complete and fully executed Proposal Forms (Sections 1 and 2) and Proposal Specification form (PART TWO) as instructed.

Proposals must be submitted in a sealed opaque envelope (or other non-transparent package or container) marked properly with the following in the upper left-hand corner: Proposer's name and address, name and telephone number of contact person, Proposal Invitation No. TEC 109-26, Transportation Fuels (Unleaded Gasoline and Diesel Fuel) and Proposal Due Date. Proposals may be submitted by U.S. Mail, common carrier or other courier or delivery service, or by hand delivery. If forwarded by mail or other courier or delivery service, the sealed proposal envelope, identified as indicated above, should be enclosed in another envelope. Each envelope should be addressed to:

Texas Association of School Boards, Inc.  
Attn: Ava Benford, Department Director, Cooperative Purchasing  
12007 Research Blvd.  
Austin, TX 78759

**NOTE:** Proposers should either download or print all sections of this Proposal Invitation, including PART ONE (Fixed-Rate Fuels), PART TWO (Rack Rate and Index-Priced Fuels), and the Proposal Forms. Vendor's Proposal (including completed and/or executed Proposal Specification form (PART TWO) and Proposal Forms (Sections 1 and 2) must be returned in the sealed envelope. **Proposals may not be submitted electronically or by facsimile.**

**This Proposal Invitation is divided into two parts: PART ONE for Fixed-Rate Fuels and PART TWO for Rack Rate and Index-Priced Fuels. Proposers wishing to submit proposals for both fixed rate and rack rate/index priced Fuels must fully complete all required documents for both PART ONE and PART TWO. All Proposers, whether submitting a Proposal for PART ONE, PART TWO, or both, must fully complete all Proposal Forms.**

The deadline for submitting proposals is **2:00 p.m., C.S.T., June 11, 2026** ("Proposal Due Date"). Proposals must be received no later than the stated deadline. **Late Proposals will be rejected and returned to Proposer unopened.** A representative of Proposer who is authorized to enter into contracts on behalf of Proposer must manually sign the Proposer's Acceptance and Agreement Form and other forms associated with this Proposal Invitation, in ink. Proposals received without proper signature will not be considered.

**Proposers must include all required information, including Proposal Forms, with the Proposal and include one (1) paper set. Proposers must also provide an electronic copy of their Proposal on a USB flash drive.** Proposers should retain photocopies for their files. Any change made to any written response on any of the Proposal documents must be made in ink by marking through the original entry and clearly entering the new information alongside the change. Changes must not be made with correction fluid. All changes must be initialed by the person making the change, and the name of the person who initialed the change must be noted in a footnote on the same page containing the correction. **Failure to return any document or information required as part of the Proposal may result in the rejection of the entire Proposal.**

Proposers or their authorized representatives are expected to fully inform themselves as to the terms, conditions, requirements and specifications of this Proposal Invitation before submitting Proposals. Failure to do so will be at Proposer's own risk. The law makes no allowance for errors of omission or commission on the part of Proposers; furthermore, a Proposer cannot secure relief on the plea of error or ignorance concerning any requirement included in the Proposal Invitation. **Proposals may be withdrawn prior to the opening date and time, but only in strict accordance with the applicable General Terms and Conditions set out hereinafter in this Proposal Invitation. Proposals that are in the Cooperative's possession at the time Proposals are due shall be deemed final, conclusive, and irrevocable, and no Proposal will be subject to withdrawal, amendment, or correction after the due date and time specified in this Proposal Invitation.** However, the Cooperative reserves the right, in its sole discretion, to seek clarification, communicate and resolve issues around deviations that were submitted in a Proposal, consistent with the general procurement principles of fair competition.

## **GENERAL INFORMATION**

### **INTENT AND PURPOSE OF THE CONTRACT**

The intent of this Proposal Invitation is to solicit sealed Proposals to establish a contract for **Transportation Fuels (Unleaded Gasoline and Diesel Fuel)** (collectively "Fuels") that may be procured by Cooperative members, both under the Energy Cooperative's Fixed-Rate Fuel Program and at rack rate or index-based pricing as set forth in the Proposal Invitation documents. Purchases can be made by a Cooperative member at any time within the Contract term.

**This Proposal Invitation is a solicitation for Fuel products only as set forth herein. AWARDED VENDORS SHALL NOT SELL OR PROPOSE TO SELL ANY EQUIPMENT, STORAGE TANKS, OR OTHER ITEMS NOT SPECIFICALLY INCLUDED IN THIS PROPOSAL INVITATION UNDER ANY CONTRACT AWARDED UNDER THIS PROPOSAL INVITATION. If a Cooperative member wishes to purchase goods or services from a Vendor that are not covered under the Vendor's Cooperative contract, such items must be procured separately in accordance with applicable state law and local policy.**

### **TERM OF CONTRACT**

The term of this Contract will be from September 1, 2026, to August 31, 2027, with four (4) possible one-year renewals.

An awarded Vendor has no right to or vested interest in contract renewal. The Cooperative will evaluate all Contract awards prior to the expiration of the then current Contract term on the basis of various factors that may include the amount of annual business, performance, and continued provision of best value to Cooperative members. For purposes of this Proposal Invitation, an awarded Vendor must generate a minimum of \$35,000 in Fuel sales annually during both the initial term and any renewal term or may not be offered an additional renewal term. A Vendor's failure to generate this minimum amount may also be considered by the Cooperative as part of Vendor's past performance evaluation on future proposal invitations. For purposes of renewal, contract awards for any particular Fuel or Fuels and for fixed rate or rack/index rate shall each be considered separate contracts and the Cooperative reserves the right to renew any Vendor for only one or a portion of awarded items.

### **SERVICE/ADMINISTRATIVE FEE**

An awarded Vendor under this Proposal Invitation must pay Cooperative Administrative Fees for the Fixed-Rate Fuel Program as set forth in PART ONE of this Proposal Invitation and Service Fees for rack rate and index-priced fuels as set forth in PART TWO of this Proposal Invitation.

### **AWARD AND EVALUATION**

All information required by this Proposal Invitation must be submitted with the Proposal or the Proposal may be deemed nonresponsive. Responsive Proposals will be evaluated, and any Contracts will be awarded based on the evaluation and award criteria as set out in PART ONE for Fixed-Rate Fuels and in PART TWO for Rack Rate and Index Priced Fuels, as applicable, determined to provide best value to Cooperative members.

### **COMPLIANCE WITH APPLICABLE LAWS**

By submitting a Proposal, the Proposer certifies that Proposer has provided its valid, proper and correct business entity name and information in its Proposal, that such entity is operating in good standing with the proper authority from whatever state or local jurisdiction is required, and Proposer has obtained, and, if awarded, will continue to maintain during the entire term of this Contract, all permits, approvals, and/or licenses necessary for lawful performance of its obligations under this Contract. Proposer further certifies that, if awarded, Proposer will comply with all applicable state, federal, and local laws, rules, and regulations in regard to awarded products and/or services.

### **CONFIDENTIAL INFORMATION**

Any information submitted by Proposer that Proposer considers to be confidential must be clearly identified as such on the Confidential/Proprietary Information Form.

### **PIGGYBACK CONTRACT AND OTHER ENTITY CLAUSE**

It is the Cooperative's intent that other governmental entities throughout the United States have the opportunity to purchase some or all of the goods or services awarded under PART TWO of the Contract at the same pricing and according to the applicable Terms and Conditions in this Proposal Invitation, subject to applicable state law, through a piggy-back award or similar agreement. To the extent applicable, Vendor must offer and sell the awarded goods and services to such other organizations and entities in accordance with Vendor's Proposal, including without limitation the State Service Designation Form and the National Purchasing Cooperative Vendor Award Agreement Proposal Form. The term "Cooperative member" or "Cooperative members" as used in this Proposal Invitation in reference to a purchasing entity shall include such other organizations and entities where appropriate. If during the Contract term, Vendor wishes to serve one or more states in addition to the state(s) listed in its Proposal, Vendor must execute a new State Service Designation Form.

### **ADDITIONAL REQUIREMENTS FOR PURCHASES USING FEDERAL GRANT FUNDS (2 C.F.R. 200 Uniform Guidance / EDGAR):**

When a Cooperative member seeks to procure goods and services using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. This includes, but is not limited to, the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. 200 (sometimes referred to as the "Uniform Guidance" or new "EDGAR"). All Vendors submitting a Proposal must complete the EDGAR Vendor Certification Form contained in the Proposal Forms regarding their willingness and ability to comply with certain requirements which may be applicable to specific Cooperative member purchases using federal grant funds. This information will not be used for evaluation purposes but will be made available to Cooperative members for their use while considering their purchasing options when using federal grant funds. Cooperative members may also require Vendors to enter into ancillary agreements, in addition to the applicable Contract general terms and conditions, to address the member's specific contractual needs, including contract requirements for a procurement using federal grants or contracts.

# TEC 109-26

## PART ONE:

# FIXED-RATE FUELS

## **GENERAL INFORMATION, PART ONE: ENERGY COOPERATIVE FIXED-RATE FUEL PROGRAM**

### **OVERVIEW OF THE FIXED-RATE FUEL PROGRAM**

The Energy Cooperative established a fixed-rate transportation fuel pilot program in the summer of 2009 in response to the volatility of transportation fuel costs and its impact on school district and other governmental entity budgets. Under the pilot, the Energy Cooperative aggregated specified quantities of transportation fuel for Cooperative members who agreed to purchase specific amounts of transportation fuel during a specific term from the fuel vendor selected by the Energy Cooperative. In 2010, the Energy Cooperative decided to offer fixed-rate transportation fuel as an ongoing Cooperative program.

The Cooperative issues PART ONE of this Proposal Invitation for fuel suppliers and/or distributors that are interested in serving Cooperative members with any of the following through the Cooperative's fixed-rate fuel programs (collectively "Fixed-Rate Fuel Program"):

- (1) fixed per-gallon pricing for **unleaded gasoline** and related services and
- (2) fixed per-gallon pricing for **diesel fuel** and related services.

The Cooperative seeks a relationship with reputable fuel vendors to provide Fuels at a competitive fixed price and the services described below through the Cooperative's Fixed-Rate Fuel Program.

### **TWO LEVEL PROCUREMENT**

The Fixed-Rate Fuel Program is structured to have two levels of procurement. **In the first level**, the Cooperative Board intends to select, from Proposers that respond to PART ONE of this Proposal Invitation, a finite panel of qualified Fuel vendors ("Approved Vendors") whose products and services represent best value for Cooperative members. The Approved Vendors, if any, for each fuel type will be awarded separately to form separate panels. The Approved Vendors will serve on the panel(s) for which they were selected for a 12-month term ("Panel Term"), which may be extended for up to four additional one-year terms.

**In the second procurement level**, the Cooperative intends to obtain pricing from Approved Vendors for specific aggregated Cooperative member pools or single, non-pool Cooperative member purchases. (A reference to "Pool" in this Proposal Invitation means both a specific aggregated Cooperative member pool and a single Cooperative member purchase unless otherwise indicated.) One, some, or all of the Approved Vendors on a Fuel panel may be asked to provide indicative pricing when a Pool is being created, and then final executable fixed-price bids at the time the Pool is executed. The Cooperative Board, either directly or through the Cooperative Administrator according to criteria established by the Board, will choose one of the Approved Vendors as the "Selected Vendor" to serve the Pool, again based upon best value to Members. **The Cooperative reserves the right, in its sole discretion based upon the anticipated needs or requirements for a particular Pool or Pools, to seek fixed-price bids from only a portion of the Vendors on a panel of Awarded Vendors. An Awarded Vendor is not guaranteed the opportunity to bid on any individual Pool.**

**PART ONE of this Proposal Invitation is designed for the first level of fixed-rate fuel procurement only; that is, to select the panel of Approved Vendors.** Proposers will not submit fixed-rate Fuel pricing or bids as part of this first level process. Prior to the creation of a Pool, the Cooperative, through the Cooperative Administrator, will initiate the second level of procurement and will at that time provide detailed instructions to one or more Approved Vendors for submitting fixed-rate pricing and bids.

Currently, there are approximately 6,000,000 gallons of fixed-rate Fuel under contract through the Cooperative Fixed-Rate Fuel Program, as well as approximately 7,000,000 gallons purchased through the current Cooperative contract for rack rate/index-priced Fuels (PART TWO). These estimates are based on prior contracts for similar products and services. The Energy Cooperative does not guarantee or commit as part of this Proposal Invitation that any minimum or maximum number of Cooperative members will participate in the Cooperative fuel programs or that any minimum or maximum amount of Fuel will be purchased. Additionally, the Energy Cooperative does not guarantee that an Awarded Vendor will be provided an opportunity to bid on any Pool or will be chosen as the Selected Vendor for any one or more Pools. The Cooperative reserves the right, in its sole discretion and depending on needs for a particular Pool or Pools, to seek fixed-price bids by and through the Cooperative Administrator from only a portion of the Awarded Vendors. The selection of the Selected Vendor for a specific Pool will be based upon best value to the participating Members.

Although the Cooperative intends to select a panel of qualified vendors as "Approved Vendors" in this first level of procurement, the Cooperative reserves the right to not designate any panel for any one or more of the included fuels, or to select only one vendor as an Approved Vendor, if it determines such is appropriate and necessary to provide the best value to Cooperative members participating in the Program.

### **FUEL SERVICE**

The Cooperative seeks Proposals from Vendors that will provide high-quality Fuels, offer either regional or state-wide delivery of Fuel, and provide outstanding customer service. The services to be provided by Vendor shall include the following:

**Product Delivery.** Vendor will be responsible for the timely delivery of Fuel to the Cooperative member in accordance with the applicable Purchase Agreement described in this PART ONE of the Proposal Invitation. Vendor is expected to absorb any increased cost the Cooperative member incurs as a result of a delayed delivery.

**Member Account Management.** Vendor shall send each Cooperative member an invoice that includes the price of the Fuel, the Cooperative Administrative Fee (as defined herein), transportation and delivery charges, and any applicable taxes and fees. Any credits and taxes shall be passed through at cost and the Vendor shall timely remit these amounts to the payee entities.

**Customer Service.** Vendor shall identify and maintain a dedicated account manager for Cooperative members and the Cooperative who will be available during normal business hours. The account manager shall promptly respond to questions or concerns from a Cooperative member or the Cooperative (including the Cooperative Administrator) and assist them in resolving billing, collection, account management, customer service or other issues.

**Procurement Strategy.** Approved Vendors are expected to help the Energy Cooperative develop and implement a Fuel procurement strategy to benefit all Cooperative members. For example, Approved Vendors may be asked to provide regular and periodic pricing information, such as daily rack and fixed futures pricing, to assist the Cooperative in determining the timing for Fuel Pools. Additionally, the Cooperative expects Approved Vendors to help develop flexible purchasing strategies to provide Cooperative members with budget certainty and opportunities to lower Fuel costs. These strategies may include the regular review of published futures prices to determine optimum times for Cooperative members to lock in fixed prices and options for Cooperative members to receive a reduction in their fixed price under certain circumstances.

**Marketing. Approved Vendors will be required to help the Cooperative market the Program.** Approved Vendors may not actively market or provide awarded Fuels at fixed contract rates to Texas school districts during the Panel Term except through the Fixed-Rate Fuel Program.

### **COOPERATIVE ADMINISTRATIVE FEE**

For each Cooperative member Purchase Agreement for fixed-rate Fuels, Vendor shall collect the Cooperative's administrative fee ("Cooperative Administrative Fee" or "Administrative Fee") as set forth below and remit the fees to the Cooperative by delivering to the Cooperative Administrator in Austin, Texas, no later than the 30<sup>th</sup> day of the month following the calendar month of delivery of the Fuel to the ordering Cooperative member.

The Cooperative Administrative Fee for each Cooperative member Purchase Agreement shall be calculated and remitted as follows:

- Five cents (\$0.05) per gallon for the first 500,000 gallons delivered to the Cooperative member under the Purchase Agreement;
- Two cents (\$0.02) per gallon for gallons 500,001 through 1,000,000 delivered to the Cooperative member under the Purchase Agreement; and
- One-half cent (\$0.005) per gallon for gallons 1,000,000 and above delivered to the Cooperative member under the Purchase Agreement.

The Cooperative reserves the right, in its sole discretion, to reduce the Administrative Fee for any fuel type at any time. In the event the Cooperative reduces the Administrative Fee for a particular Fuel or Fuels, Vendor shall ensure that the applicable Purchase Agreement with a purchasing Cooperative member reflects and discloses the actual Administrative Fee for the subject purchase. Vendor must incorporate the applicable Cooperative Administrative Fee into the price of the Fuel, collect the Administrative Fee from Cooperative members participating in a Fuel Pool through billing, and report and remit payment of the Administrative Fee to the Cooperative. To the extent a price quoted by Vendor for a Cooperative member purchase included an Administrative Fee amount greater than the amount ultimately charged by the Cooperative, the Vendor shall reduce the Fuel price by the amount of the decrease in the Administrative Fee.

### **PROPOSAL EVALUATION CRITERIA**

A Vendor's Proposal for Fixed-Rate Fuels will be evaluated to determine best value to Cooperative members. The Cooperative will evaluate Proposals received for each fuel type (unleaded gasoline and diesel fuel) separately to determine best value to Cooperative members for each product based on the criteria set forth in the Paragraph C.2 of the Fixed-Rate Fuel General Terms and Conditions. **The Cooperative reserves the right to reject any or all Proposals.**

### **TRANSPORTATION AND DELIVERY COSTS**

As explained above, the first level of procurement for PART ONE of this Proposal Invitation is designed to select the panel of Approved Vendors for the Fixed-Rate Fuel Program and not to obtain fixed-rate Fuel price proposals. Approved Vendors will submit fixed-rate Fuel pricing and bids, if and when requested by the Cooperative or Cooperative Administrator, to provide Fuel as part of the second level process to choose a Selected Vendor for a specific Fuel Pool. The fixed-price solicited at that time will be for the Fuel commodity only and the quoted price cannot include charges for transportation and delivery.

Although fixed-rate Fuel commodity pricing is not part of the first level of procurement, the Cooperative will consider a Proposer's transportation and delivery charges in evaluating Proposers and selecting Approved Vendors under this Proposal Invitation. Proposers must provide their freight rates (distance from rack to Cooperative member delivery point) and identify and provide all transportation and delivery charges and surcharges that may be invoiced in relation to the transportation and delivery of the Fuel, e.g. delivery, surcharge, demurrage, lift and pump fees, etc. on the Freight Rates and Other Delivery Charges Form located in the Proposal Forms section of this Proposal Invitation.

## **SERVICE REGIONS**

The Cooperative is interested in receiving Proposals from both regional and statewide Vendors. A Proposer must indicate on the Texas Regional Service Designation Form of this Proposal Invitation the regions Vendor proposes to serve. A Proposer must also indicate and explain on the Texas Regional Service Designation Form any variations or deviations from the Proposer's rates and charges shown on the Freight Rates and Other Delivery Charges Form that are associated with service to the designated regions.

## **FUEL PRICING**

The Cooperative desires a transparent pricing process that will enable it to quantify and verify the value that the Fixed-Rate Fuel Program and participation in a Fuel Pool provides to Cooperative members. The method used by an Approved Vendor to determine its indicative and executable fixed-rate prices should be clear, understandable, and certain. An example of such transparency includes, but is not limited to, the inclusion of pricing formulas used to derive the fixed price.

## **FIXED-RATE FUEL GENERAL TERMS AND CONDITIONS**

The Fixed-Rate Fuel General Terms and Conditions set out below in PART ONE shall apply to any Contract between the Cooperative and Vendor(s) awarded under PART ONE of the Proposal Invitation for fixed-rate Fuels. **Proposers must clearly note and explain in detail any and all deviations to the Fixed-Rate Fuel General Terms and Conditions at the time the Proposal is submitted on the Deviation and Compliance Form. If no deviation is submitted in writing with the Proposal, Proposers will be deemed to have agreed to the terms of the Fixed-Rate Fuel General Terms and Conditions.**

## **PURCHASE AGREEMENT**

As part of a panel award, each Approved Vendor will be required to use the purchase agreement approved by the Cooperative for sales of fixed-rate Fuels to Energy Cooperative members, including through Fuel Pools, during the Panel Term, the current form of which is included herein as Attachment 1, Transportation Fuel Purchase Agreement ("Purchase Agreement"). **Proposers must clearly note and explain in detail any and all deviations to the Purchase Agreement at the time the Proposal is submitted on the Deviation and Compliance form. If no deviation is submitted in writing with the Proposal, Proposers will be deemed to have agreed to the use of the Purchase Agreement for any fixed-rate sales of unleaded gasoline or diesel fuels to Cooperative members.**

**Any award to Vendors under PART ONE of this Proposal Invitation is contingent on Vendor's agreement to use the Purchase Agreement form approved by the Cooperative for use in all fixed-rate Fuel sales to Energy Cooperative members, including through Fuel Pools established during the Panel Term. ANY ATTEMPTED OR ACTUAL USE BY VENDOR OF A FORM OTHER THAN THE APPROVED TRANSPORTATION FUEL PURCHASE AGREEMENT SHALL BE AN EVENT OF DEFAULT UNDER THE CONTRACT UPON WHICH VENDOR SHALL BE SUBJECT TO ALL REMEDIES THEREFORE, UP TO AND INCLUDING SUSPENSION AND TERMINATION OF VENDOR'S CONTRACT.**

The Purchase Agreement form may be updated as provided in Section E.2(a) of the Fixed-Rate Fuel General Terms and Conditions.

The requirements set forth in the Energy Cooperative-approved Purchase Agreement form(s) shall be minimum requirements. It is possible that a Cooperative member may require additional terms or negotiate terms for individual purchase agreements with Awarded Vendors, but such terms must be consistent with and protect the member at least to the same extent as the Cooperative's approved form. To the extent of any conflict between the requirements of a Cooperative approved Purchase Agreement and the requirements contained in any Cooperative member purchase agreement with an Awarded Vendor, the stricter requirements on the Vendor shall apply.

With respect to general procedures regarding Purchase Agreements, the Energy Cooperative typically requires a Cooperative member wishing to participate in a new Fuel Pool that is being created to execute a Letter of Commitment with the Energy Cooperative. A Letter of Commitment formally commits the Cooperative member to purchase a certain amount of Fuel at a fixed-rate from the Selected Vendor during a specific contractual period, e.g., 3 months, 6 months, 9 months, etc. if pricing is below a certain amount and a Fuel Pool is established during the commitment period. After the Pool is executed, the Selected Vendor will enter into a Purchase Agreement directly with each participating Cooperative member. The Purchase Agreement is signed by the Selected Vendor and Cooperative member only. **The Energy Cooperative is NOT a party to the Purchase Agreement. Neither the Cooperative nor the Cooperative Administrator, TASB, shall in any way be liable to either Vendor or a Cooperative member for either party's default, performance, or nonperformance under a Purchase Agreement.**

## **FIXED-RATE FUEL GENERAL TERMS AND CONDITIONS**

### **A. General Provisions**

#### **1. Statement of Inclusion/Applicability**

These Fixed-Rate Fuel General Terms and Conditions ("Terms and Conditions") apply to this Proposal Invitation and the proposing company's response to this Proposal Invitation and are an integral part of any Contract which is awarded in association with PART ONE of this Proposal Invitation, Fixed-Rate Fuels. (Any reference to "Proposal Invitation" in these Fixed-Rate Fuel General Terms and Conditions shall **NOT** include PART TWO, Rack Rate and Index-Priced Fuels.)

#### **2. Organization and Section Titles**

The provisions of these Terms and Conditions are generally organized according to the stages of the procurement process: proposal, evaluation, award and performance. This organization of and the section titles used in these Terms and Conditions are for convenience and reference only, and in no way define, describe, extend, or limit the scope or intent of the provisions of any section of this document. Unless otherwise stated, any listing of factors or criteria in these Terms and Conditions does not constitute an order of preference or importance.

#### **3. Definitions**

As used in this Proposal Invitation and associated documentation, the following terms have the meanings set out below unless the context requires otherwise, regardless of whether initial capitalization is consistently used. Words used in the singular include the plural, and words used in the plural include the singular. To the extent terms are defined or used differently in different Proposal Invitation documents, substance prevails over form:

**"Administrative Fee"** or **"Cooperative Administrative Fee"** has the meaning set forth in Section E.4 of these Terms and Conditions.

**"Administrator"** or **"Cooperative Administrator"** means the TASB Energy Cooperative's administrator, the Texas Association of School Boards, Inc. ("TASB").

**"Approved Vendor"** means a Vendor awarded a Contract by the Cooperative which gives Vendor the opportunity to potentially serve on a Fuel Panel or Fuel Panels for the Panel Term.

**"Contract"** means the contract between the Cooperative and a successful proposer (Vendor), which gives Vendor the opportunity to potentially serve on a panel of Approved Vendors for the Cooperative's Fixed-Rate Fuel Program based on the Cooperative's acceptance of all or part of the Proposer's Proposal, and is comprised collectively of the following:

- (a) This Proposal Invitation
- (b) Vendor's Proposal; and
- (c) Notice of Award issued to Proposer by the Cooperative; and

**"Cooperative"** or **"Energy Cooperative"** means the TASB Energy Cooperative, including when acting by and through the Cooperative Administrator, unless a distinction is made otherwise.

**“Cooperative member”** or **“member”** means a local governmental entity (e.g., school district, city or county) or other governmental entity that is a member of the Cooperative and is eligible to purchase through a governmental purchasing cooperative or interlocal contract. The term “Cooperative member” or “Cooperative members” as used in this Proposal Invitation in reference to a purchasing entity may include, where appropriate, other organizations and entities which have the opportunity to purchase the goods or services under the Contract through a piggy-back or similar agreement as provided in this Proposal Invitation.

**“Fixed-Rate Fuel Program”** means the Cooperative program through which participating Cooperative members may purchase specified quantities of unleaded gasoline or diesel fuel from an Approved Vendor through a specific aggregated member pool or a single member purchase at a price that is at or below a fixed contract rate.

**“Fuel”** or **“Fuels”** means unleaded gasoline and/or diesel fuel.

**“Fuel Panel”** means the Vendor(s) chosen by the Cooperative to be on a panel of qualified Fuel vendors whose products and services are determined by the Cooperative to represent best value for Cooperative members that participate in the Fixed-Rate Fuel Program.

**“Fuel Pool”** or **“Pool”** means an aggregation pool executed by the Cooperative during the Panel Term in which the Fuel requirements of members of the Energy Cooperative are joined with the requirements of other members of the Energy Cooperative to create a purchasing unit for the purchase of the Fuel. A reference to “Fuel Pool” or “Pool” in the Proposal Invitation means both a specific aggregated Cooperative member pool and a single Cooperative member purchase unless otherwise indicated.

**“Panel Term”** means the 12-month term for which Awarded Vendor(s) will serve on the Fuel Panel(s) for which they were selected, and any renewal terms.

**“Proposal Invitation”** means this Proposal Invitation and all associated documentation, including without limitation, these Terms and Conditions and any amendments hereto, additional terms and conditions specific to this Proposal Invitation, instructions, exhibits or attachments, forms, agreements, certifications, item specifications, appendices, and addenda. For purposes of these Terms and Conditions, the term shall not include PART TWO, Rack Rate and Index-Priced Fuels.

**“Proposal”** means Proposer’s complete and correct response to this Proposal Invitation, including all information, forms, agreements, certifications and other documentation required by this Proposal Invitation, properly submitted by Proposer’s duly authorized representative.

**“Proposer”** or **“Vendor”** means the company or firm that submits a Proposal or, depending on the context, the proposing company to which the Cooperative awards a Contract under this Proposal Invitation. (For purposes of the forms associated with this Proposal Invitation, “you”, “your”, “I” or “my” refer to Proposer or Vendor, as applicable.)

**“Purchase Agreement”** means the form of agreement(s) approved by the Cooperative and agreed to by Vendor for use for the sale and delivery by Vendor of Fuel to Cooperative members at a fixed-rate, including through a Fuel Pool. The term may include, depending on the context, any additional terms or modifications to such agreement which are requested by a Cooperative member and agreed to by Vendor.

**“Selected Vendor”** means the selected Approved Vendor for a specific Fuel Pool upon the Cooperative’s finding of “best value” for Cooperative members that wish to participate in a specific Fuel Pool.

## **B. Proposal Requirements**

### **1. Deviations from Item Specifications or General Terms and Conditions**

Other than a deviation submitted in writing with the Proposal and **accepted by the Cooperative**, the Cooperative will hold Vendor accountable to the Cooperative and Cooperative members to perform in strict accordance with these Terms and Conditions and the item specifications as written. (For requirements for ancillary agreements between Cooperative members and Vendors for specific purchases, see section D.2 (Applicable Terms and Conditions; Ancillary Agreements).)

Vendor must clearly note and explain in detail any and all limitations, exceptions, qualifications, special conditions, or other deviations (collectively "deviations") from these Terms and Conditions or any of the item specifications in the Proposal on the Deviation and Compliance form (or an attachment thereto) at the time the Proposal is submitted. Deviations must be specific to these Terms and Conditions or the item specifications and clearly identify the specific section or item to which the deviation applies. The Cooperative shall not be deemed to have accepted, and a Contract shall not be subject to, any term or condition included in Vendor's Proposal which differs from these Terms and Conditions unless Vendor has specifically identified the deviation on the Deviation and Compliance form and the deviation is accepted by the Cooperative. The submission of a deviation or deviations may place Vendor at a competitive disadvantage or otherwise prevent the Cooperative from considering the Proposal on the affected item(s).

**The following Terms and Conditions are not subject to deviation. Any attempted deviation by Vendor to such Terms and Conditions, whether directly or indirectly, shall be deemed rejected by the Cooperative and, unless otherwise withdrawn by Vendor, may result in Vendor's Proposal being rejected in its entirety:**

- (a) Section B.4, Requirements of the Texas Public Information Act; Confidential Information
- (b) Section B.7, Certifications
- (c) Section E.4, Cooperative Administrative Fee
- (d) Section E.7, Disclaimer of Warranty and Limitation of Liability
- (e) Section E.8, Force Majeure
- (f) Section E.9, Events of Default and Remedies
- (g) Section E.10, Duty to Mitigate
- (h) Section E.11, Indemnification
- (i) Section F, Miscellaneous, including Subsections F.1-F.12

**Further, any deviation by Vendor which, directly or indirectly, seeks to add terms or requirements substantively similar to the following shall be deemed rejected by the Cooperative and, unless otherwise withdrawn by Vendor, may result in Vendor's Proposal being rejected in its entirety:**

- (a) Any deviation seeking to supersede these Terms and Conditions or the Purchase Agreement form in their entirety with Vendor's own agreement form, standard agreement, or terms and conditions;
- (b) Any deviation seeking to require the Cooperative, Cooperative Administrator, or any Cooperative member to indemnify or hold harmless Vendor.

The Cooperative may, in its sole discretion, seek clarification from and/or communicate with Proposer(s) regarding any submitted deviation, consistent with general procurement principles of fair competition. The Cooperative reserves the right to accept or reject a proposal based upon any submitted deviation.

## 2. Addenda

Any interpretation, correction or change to this Proposal Invitation will be made by addendum, and updated information contained in an addendum will prevail over the information contained in the original Proposal Invitation or a previous addendum. The Cooperative is the sole authority for the issuance of any addendum, and any communication related to this Proposal Invitation that is not from the Cooperative is invalid. Although the Cooperative may provide electronic notification when an addendum has been issued and the changes will be flagged, it is Vendor's responsibility to monitor the [tasbenergy.com](http://tasbenergy.com) website for possible addenda and incorporate any posted addendum into the Proposal. Vendor must acknowledge each addendum in accordance with the instructions accompanying the addendum.

## 3. Proposal on All or Certain Items; Service Regions

Unless otherwise specified, Vendor may propose on any or all items. Vendor should answer all questions related to each item on which Vendor wishes to propose, and either leave the questions for other items for which Vendor does not wish to propose unanswered (blank) or indicate "No Bid." The Cooperative will consider items individually and make awards on each item independently.

Vendor's Proposal shall specify the regions that Vendor proposes to serve by completing the appropriate Proposal form. Vendor shall specify only those regions for which Vendor is authorized under applicable law to sell the proposed products. If Vendor proposes multiple products, and the regions which the Vendor is able to serve and proposes to serve differ by product, Vendor must specify the regions by product in its Proposal. **A Vendor may not select a region in its Proposal where Vendor is unable or unauthorized to sell a proposed product. If it is determined that a Vendor is unable, unauthorized, or refuses to provide any awarded product(s) in a region specified in Vendor's Proposal, such inability, lack of authorization, or refusal shall be an event of default and subject to all remedies up to and including termination of Vendor's Contract.**

## 4. Requirements of the Texas Public Information Act; Confidential Information

### (a) Vendor Compliance

**The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Proposal Invitation and any awarded Contract, and Vendor agrees that the Contract can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.**

Pursuant to Texas Government Code Sections 552.371 and 552.372, to the extent the Contract or any Purchase Order thereunder has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by a governmental body or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by a governmental body in a fiscal year of the governmental body, Vendor shall:

- 1) preserve all contracting information, as defined in Texas Government Code Section 552.003(7) ("Contracting Information"), related to the Contract or any Cooperative member Purchase Order thereunder as provided by the records retention requirements applicable to the governmental body for the duration of the Contract (including any Purchase Order thereunder);
- 2) promptly provide to the Cooperative or Cooperative member, as applicable, any Contracting Information related to the Contract that is in the custody or possession of Vendor on request of the Cooperative or Cooperative member; and
- 3) on completion of the Contract (including any Purchase Order thereunder), either:
  - (A) provide at no cost to the Cooperative or Cooperative member, as applicable, all Contracting Information related to the Contract (including any Purchase Order) that is in the custody or possession of Vendor; or

(B) preserve the Contracting Information related to the Contract (including any Purchase Order thereunder) as provided by the record retention requirements applicable to the Cooperative or Cooperative member, as applicable.

The Cooperative may not accept a Proposal or award a Contract to a Vendor that the Cooperative has determined has knowingly or intentionally failed to comply with Texas Government Code Chapter 552, Subchapter J, in a previous Proposal or Contract unless the Cooperative determines and documents that Vendor has taken adequate steps to ensure future compliance with the requirements of said Subchapter.

**(b) Confidential/Proprietary Information.**

**Proposer must clearly identify information in the Proposal that Proposer considers proprietary or confidential by completing the Confidential/Proprietary Information Form. Further, for any other information provided by Vendor to the Cooperative after Contract award, Vendor shall clearly mark and identify any information that Vendor considers proprietary or confidential. The Cooperative will treat such information as confidential only to the extent allowable under the Texas Public Information Act (Chapter 552 of the Texas Government Code) or similar disclosure law.**

If Vendor fails to properly identify information that Vendor considers proprietary or confidential, the Cooperative shall have no obligation to seek protection of such information from public disclosure should a member of the public or other third party request access to the information under the Texas Public Information Act or similar disclosure laws. **The Cooperative and its Administrator will not be responsible for Vendor's failure to clearly identify information Proposer considers confidential or proprietary.** Vendor may be notified of a third party request for information that Vendor has identified in the Confidential/Proprietary Information Form as proprietary or confidential when required by the Texas Public Information Act or similar disclosure law.

By submitting a Proposal, Vendor acknowledges that the Cooperative and the Cooperative Administrator will disclose information when required by law, even if such information has been identified herein as information Vendor considers confidential or proprietary.

**5. Certain Professional Services Excluded**

Neither this Proposal Invitation nor any Contract includes services that are required to be procured under the Professional Services Procurement Act (Chapter 2254 of the Texas Government Code), including without limitation architecture and professional engineering services.

**6. Withdrawal or Modification of Proposal**

Vendor may withdraw a submitted Proposal **prior to the Proposal Due Date and time** specified in this Proposal Invitation. A Proposal may be withdrawn only in strict accordance with this section.

**Withdrawal of Proposals:** Proposer must submit a written request to the Cooperative for authorization to withdraw a Proposal. The request, which must apply to the submitted Proposal in its entirety, must be signed by an individual duly authorized to enter into contracts on Proposer's behalf, and indicate the individual's title. The Proposal may not be withdrawn after the specified Proposal Due Date and time, and will not be considered for withdrawal if not submitted in accordance with the packaging and labeling instructions applicable to Proposal submissions.

If the Cooperative Administrator has any question or doubt regarding Proposer's identity or the identity of its Proposal, withdrawal will not be allowed. If the Cooperative decides to allow the withdrawal, Proposer's duly authorized representative will be required to complete and sign a written receipt satisfactory to the Cooperative Administrator before the Proposal will be released. The decision of the Cooperative Administrator relating to matters concerning withdrawal of a Proposal is final.

Proposer may resubmit the released Proposal, or submit a new Proposal, up until the Proposal Due Date and time, provided any new submission meets the requirements of this Proposal Invitation. If Proposer resubmits a Proposal that was withdrawn and makes any change to any document in the proposal package, the change must be made in accordance with the Cooperative's instructions for Proposal submissions, and Proposer will be deemed to have authorized such change.

**Proposals that are in the Cooperative's possession at Proposal Due Date and time shall be deemed final, conclusive, and irrevocable; and no Proposal will be subject to withdrawal, amendment, or correction after the Proposal Due Date and time specified in this Proposal Invitation.** However, pursuant to section B.1 (Deviations from Item Specifications or General Terms and Conditions), the Cooperative reserves the right, in its sole discretion, to seek clarification, communicate and resolve issues around deviations that were submitted in a Proposal, consistent with general procurement principles of fair competition.

## 7. Certifications

The Proposer's Acceptance and Agreement and Proposal Acknowledgements forms, which are fundamental to and incorporated into this Proposal Invitation, require Vendor to certify to certain matters. Pursuant to and in accordance with such forms, and in addition to the matters set forth therein, Vendor certifies to the following with respect to this Proposal Invitation, the Proposal, and any Contract awarded under this Proposal Invitation.

### (a) Non-Collusion Certification

Vendor agrees and certifies to the following, and understands that the penalty for violating this non-collusion certification will be the immediate disqualification of Vendor's Proposal or, if the violation is revealed after Contract award, any remedies allowed by law or the Contract including termination of Vendor's Contract:

- 1) Neither Vendor nor any business entity represented by Vendor has received compensation for participation in the preparation of the item specifications or these Terms and Conditions related to this Proposal Invitation;
- 2) The Proposal has been arrived at independently and is submitted without collusion with any other Vendor, with any competitor or potential competitor, or with any other person or entity to obtain any information or gain any special treatment or favoritism that would in any way limit competition or give any Proposer an unfair advantage over any other Proposer with respect to the Proposal;
- 3) Vendor has not accepted, offered, conferred, or agreed to confer, and will not in the future accept, offer, confer, or agree to confer, any benefit or anything of value to any person or entity related to the Cooperative or any of its members in connection with any information or submission related to the Proposal, any recommendation, decision, vote, or award related to the Proposal, or the exercise of any influence or discretion concerning the sale, delivery, or performance of any product or service related to the Proposal;
- 4) Neither Vendor, nor any business entity represented by Vendor, nor anyone acting for such business entity, has violated the Federal Antitrust Laws or the antitrust laws of this State with regard to the Proposal, and the Proposal has not been knowingly disclosed, and will not be knowingly disclosed, to any other Proposer, competitor, or potential competitor prior to the opening of Proposals; and
- 5) No attempt has been or will be made to induce any other person or entity to submit or to not submit a Proposal.

**(b) Certification Regarding Legal, Ethical, and Other Matters**

Vendor agrees and certifies the following:

- 1) Vendor has, or has the ability to obtain, such financial and other resources, including inventories, as may be required to fulfill all the responsibilities associated with the Proposal;
- 2) Vendor has a high degree of integrity and business ethics, and a satisfactory record of performance;
- 3) Vendor is an authorized dealer, distributor, or manufacturer for the products or services offered in the Proposal for each region or state Vendor proposes to serve in the Proposal;
- 4) Vendor has not been notified by any local, state, or federal agency with competent jurisdiction that its standing in any matters whatsoever would preclude it from submitting its Proposal and Vendor would in no other way whatsoever be disqualified to propose or receive any award or Contract related to this Proposal Invitation, and Vendor will comply with any reasonable request from the Cooperative to supply information sufficient to substantiate the foregoing representations;
- 5) Vendor has provided its valid, proper and correct business entity name and information in its Proposal, that such entity is operating in good standing with the proper authority from whatever state or local jurisdiction is required, and Vendor has obtained, and will continue to maintain during the entire term of the Contract, all permits, approvals, or licenses necessary for lawful performance of its obligations under this Contract;
- 6) The prices, prompt payment discount terms, delivery terms, distribution allowances and the quality and/or performance (including warranties) of the product or services offered in the Proposal are and will remain the same or better than those offered Vendor's similarly situated customers under similar circumstances, including those offered through other purchasing cooperatives;
- 7) All pricing offered in the Proposal is and will remain fair and reasonable considering general market pricing for similar goods or services. Vendor has not and will not seek to engage in price gouging or price manipulation;
- 8) If awarded a Contract, Vendor will be limited to awarded products and services and will not seek to sell non-awarded items using the Contract;
- 9) The Proposal complies with all federal, state, and local laws concerning these types of products or services, and Vendor will continue to comply with any applicable federal, state, and local laws related to Vendor's activities in connection with the Contract;
- 10) Vendor will comply with any applicable prevailing wage rate requirements under the federal Davis-Bacon or state or local law, including Chapter 2258 of the Texas Government Code;
- 11) Vendor will maintain, at Vendor's expense, any insurance, including without limitation such workers' compensation insurance as may be required by state or local law or policy, necessary to protect the Cooperative and its members from all claims for bodily injury, death, or property damage that might arise from the performance by Vendor or its employees or its agents of any service under the Contract; however, the existence of such insurance does not relieve Vendor of full responsibility and liability for damages, injury, death, or loss as described or as otherwise provided for by law; and
- 12) Any false statement contained in the Proposal is a material breach of contract which will void the Proposal or any resulting Contract, and subject Vendor to removal from all proposal lists, and possible criminal prosecution.

**8. Proposal Signatures**

Vendor must submit its Proposal in strict accordance with the Cooperative's instructions, including having an officer duly authorized by Vendor execute the Proposal. By signing, the signatory warrants that he or she has read and agrees to the terms of the Proposal and is authorized to execute same as a legally binding act of Vendor. A facsimile or electronic signature will be deemed an original.

**9. No Reimbursement**

**Vendor understands and acknowledges the Cooperative will not reimburse or pay Vendor for any expenses Vendor incurs in preparing its Proposal or providing additional information required in**

**connection with the Proposal.**

**C. Proposal Evaluation**

**1. General**

A Proposal submitted in accordance with this Proposal Invitation will initially be considered for award; however, initial consideration of a Proposal will not constitute an assessment of its meeting the necessary qualifications, and a Proposal may be disqualified at any time during the evaluation process for failure to meet any other terms or conditions contained anywhere else in this Proposal Invitation.

**2. Best Value Criteria**

The Cooperative evaluates Proposals on the basis of best value to Cooperative members. In evaluating Proposals and determining best value for all Cooperative members, the Cooperative will consider the following criteria:

Best Value Criteria		Maximum Points
1	Reputation of Vendor and Vendor's Products/Services	20
2	Quality of Vendor's Products/Services	10
3	Vendor's Financial Soundness and Creditworthiness/Financial and Technical Resources	10
4	Extent to which Vendor, Products/Services Meet Needs of Cooperative Members including: (a) Vendor's background and experience in delivering reliable and high-quality Fuel service to school districts and governmental entities under arrangements similar to those proposed in this Proposal Invitation, including dedicated responsible customer service and timely and accurate billing for services; (b) Vendor's willingness and ability to provide opportunities for and otherwise help Cooperative members lower their Fuel costs and achieve budget stability and certainty through the Cooperative Fixed-Fuel Program; (c) Vendor's willingness and ability to utilize a transparent process for the Cooperative's reasonable oversight of the Fuel procurement and pricing process; and (d) Vendor's ability to provide Fuel delivery at costs that are competitive and established through a transparent process.	20
5	Vendor's agreement to use of the Purchase Agreement form (Attachment 1)	10
6	Vendor's agreement to the Fixed-Rate Fuel General Terms and Conditions	10
7	Vendor's Past Performance	10
8	Value of optional services offered to Cooperative members to support and enhance the quality of Fuel service provided under the Fuel Panel and Fuel Pools	5
9	Any other relevant factor or requirement listed in this Proposal Invitation	5
<b>TOTAL</b>		<b>100</b>

The Cooperative's evaluation may include Proposer's responses to the forms and other attachments or information included with a Proposal or associated with this Proposal Invitation, including but not limited to Vendor's responses to the Proposal Invitation Questionnaire, as well as any other information at its disposal deemed relevant by the Cooperative in its sole discretion. Only responsive Proposals will be evaluated. Failure to include all required information may result in a Proposal being deemed non-responsive. The Cooperative may award Contracts to multiple Proposers supplying comparable products or services, also known as a multiple award schedule, or award the Contract to a single Proposer. The Cooperative's decision to make multiple awards or a single award will be based upon the Cooperative's sole discretion regarding the type of award that provides best value to all Cooperative members.

In regard to Vendor past performance, among other factors, the Cooperative may consider a Vendor's breach of contractual obligation on any other active or prior Cooperative contract awarded to Vendor including, but

not limited to, nonpayment of service fees by Vendor, its parent company or affiliates and/or Vendor's failure to generate any minimum amount specified in a prior-awarded Cooperative contract.

This Proposal Invitation may also require Proposers to provide certain information in the Proposal Forms for which the Cooperative does not evaluate the Proposer's responses as part of the award criteria set out in this Section C.2. The Cooperative requests such information because it may be relevant to federal, state, or local procurement law or other requirements that apply to various Cooperative members. (Cooperative members may also require and request Vendors provide additional certifications and information to meet the Cooperative member's specific procurement requirements prior to making purchases under an awarded Contract.) This information, which will be made available to Cooperative members with respect to awarded Vendors, includes the following:

- (a) Resident/Nonresident Certification;
- (b) Vendor Employment Certification;
- (c) Historically Underutilized Business Certification; and
- (d) EDGAR Vendor Certification.

### 3. Cooperative Board Decision

The Cooperative reserves the right to waive any or all irregularities, formalities, or other technicalities and to be the sole and independent judge of quality and suitability of any products or services offered. The Cooperative may accept or reject a Proposal in its entirety or may reject any part of a Proposal without affecting the remainder of that Proposal and may award individual items in this Proposal Invitation in any combination or in any way that provides best value to Cooperative members based on the criteria set out in section C.2 (Best Value Criteria) of these Terms and Conditions. The Cooperative may use all means and information at the collective disposal of the Cooperative, Cooperative Administrator, and Cooperative members to evaluate Proposals. The final decision as to the best overall offer(s), including as to pricing and suitability of the proposed products or services to meet the needs of and provide best value to Cooperative members, rests solely with the Cooperative's Board of Trustees.

## D. Contract Award

### 1. Notice of Award and Related Matters

A Proposal is an offer by Proposer to contract with the Cooperative in accordance with this Proposal Invitation, including without limitation the item specifications, and these Terms and Conditions. A Proposal does not become a Contract unless and until the Proposal is accepted by the Cooperative through the issuance of a written Notice of Award to the successful Proposer, whereupon the Contract becomes binding and enforceable. The Contract may then be utilized by a Cooperative member by entering into a Purchase Agreement for the awarded products or services. **Any award will be contingent on Vendor's agreement to use the Purchase Agreement form(s) approved by the Cooperative for use in sales to Cooperative members during the Panel Term.**

The Cooperative may maintain Vendor's contract documents in electronic format for the duration of the Contract term.

## E. Contract Performance

### 1. Contract Term

**(a) Term.** The term of the Contract is for the initial term stated in this Proposal Invitation, which term begins on the date indicated in the Notice of Award. Unless otherwise stated in this Proposal Invitation, the Contract

may be renewed annually for up to four additional one-year terms as provided for in this section E.1. In the event the Contract term will expire before the Cooperative awards a successor contract for the categories of awarded products or services, the Contract may be extended beyond the expiration date upon the agreement of the Cooperative and Vendor, provided that the awarded pricing does not increase during such extension. A reference to "Contract term" or "Panel Term" in these Terms and Conditions means the initial term and any renewal term.

**(b) Survival.** The Contract shall govern the Vendor's and the Cooperative member's rights and obligations with respect to any Purchase Agreement issued during the Contract term and afterwards with respect to any Purchase Order or purchase bound by the Cooperative member for specified goods or services **before** the Contract award period ended. This includes, but is not limited to, the Vendor's obligations to pay to the Cooperative all applicable Administrative Fees as required by E.4 of these Terms and Conditions for such Purchase Agreements.

**(c) Renewals.** Vendor has no right to or vested interest in a Contract renewal. The Cooperative will evaluate the Contract award prior to the expiration of the then current Contract term (initial or renewal) and reserves the right to not renew the Contract based on factors that may include, but are not limited to, the annual amount of business, Vendor's performance (including, but not limited to, compliance with the Terms and Conditions), and the continued provision of best value to Cooperative members. With respect to annual amount of business, Vendor must generate the minimum amount specified in the General Information document associated with this Proposal Invitation through the Contract, during both the initial and the first renewal term, or may not be offered a second renewal term. A Vendor's failure to generate this minimum amount may also be considered by the Cooperative as part of Vendor's past performance evaluation on future proposal invitations. A renewal must be agreed to by the Cooperative and Vendor. Vendor must promptly, and before the start of the renewal term, notify the Cooperative in writing if Vendor does not accept a renewal offered by the Cooperative or Vendor will have been deemed to have accepted the renewal.

For purposes of renewal, contract awards for any particular Fuel or Fuels shall each be considered separate Contracts, and the Cooperative reserves the right to renew any Vendor for only one or a portion of awarded items.

## **2. Supply of Fuel to Cooperative Members**

### **(a) Service to Cooperative members; Purchase Agreements.**

Vendor agrees that all sales of Fuel by Vendor as a Selected Vendor to Cooperative members during the Panel Term shall be made pursuant to the applicable, approved Purchase Agreement form. It is possible that a Cooperative member may require additional terms or negotiate terms for individual purchase agreements with Awarded Vendors, but such terms must be consistent with and protect the member at least to the same extent as the Cooperative approved form. To the extent of any conflict between the requirements of a Cooperative approved Purchase Agreement and the requirements contained in any Cooperative member purchase agreement with an Awarded Vendor, the stricter requirements on the Vendor shall apply.

The Purchase Agreement form may be updated by the Cooperative at any time during the Panel Term to comply with applicable law or regulatory requirements. Further, the Cooperative may propose changes to the Purchase Agreement during the Contract Term, including at the start of any renewal term as a condition of renewal, in an effort to provide continued best value to Cooperative members. The Cooperative shall provide awarded Vendors with at least 30 days' written notice of proposed changes to the Purchase Agreement form. The Vendor shall notify the Cooperative Administrator in writing of any objections to proposed changes to the Purchase Agreement form within 30 days of receipt of notice of the proposed changes, upon which the

parties shall work in good faith to resolve any differences. Vendor's failure to provide notice of objection to proposed changes, Vendor's use of the Purchase Agreement as modified by the Cooperative, or Vendor's acceptance of a Contract renewal conditioned on acceptance of a modified Purchase Agreement shall be deemed acceptance by Vendor of the changes.

A Cooperative member may require a performance and/or payment bond from Vendor as may be required by law or deemed necessary or appropriate. Additionally, a Cooperative member may require Vendor to carry and provide proof of such insurance as may be required by state or local law or policy.

Individual Cooperative members may in certain circumstances require background checks on Vendor employees who will have direct contact with students or staff, or for other reasons, and may require Vendor to pay the cost of obtaining criminal history record information.

Vendor understands and agrees that use of the Purchase Agreement form and agreement to these Terms and Conditions were conditions for the Cooperative's selection of Vendor as an Approved Vendor and any award of a Fuel Pool to Vendor as a Selected Vendor for the Panel Term.

- 1) Vendor shall sell and deliver the Fuel identified in the Purchase Agreement ("**Product**") to the Cooperative members participating in the Fixed-Rate Fuel Program in accordance with the terms of the Purchase Agreement.
- 2) A Cooperative member that desires to purchase Products from Vendor shall be required to execute a Purchase Agreement with Vendor. Vendor shall promptly provide the Cooperative with copies of all executed Purchase Agreements. **Neither the Cooperative nor the Cooperative Administrator, TASB, shall be liable, or have any responsibility, to Vendor for the performance or non-performance of a Cooperative member under a Purchase Agreement.**
- 3) Vendor shall promptly respond to a Cooperative member's questions or concerns through a phone call, email or other appropriate means and shall make commercially reasonable efforts to resolve billing, account management or customer service concerns raised by a Cooperative member or the Cooperative within 30 days after receipt of notice of such concerns.
- 4) During the term of all Purchase Agreements, Vendor shall notify the Cooperative within ten (10) days after receiving or giving notice that any of the following events have occurred with respect to any Cooperative member or Vendor under any Purchase Agreement: (i) claim of Force Majeure; (ii) event of default; or (iii) early termination for any reason.

**(b) Product.**

Vendor represents and warrants that (i) it is an authorized dealer or distributor of the Products; (ii) all Products conform to the specifications required by the Cooperative; (iii) all Products delivered to Cooperative members shall be free from any defect in material, workmanship or title and (iv) fuels shall be high quality volatile hydrocarbon fuels free from any substances or water, or any alcohols additives or extenders, which may damage vehicles or equipment or contaminate storage tanks. All Products sold pursuant to a Purchase Agreement shall be of the same quality or better than that which is available to the general public through retail outlets.

Vendor shall make compensation for change in temperature of the Products at the loading point at the time the Product was unloaded into the transport and Vendor shall show the correction and adjustment made in gallons delivered using 60 degrees F as the normal temperature reading. Cooperative members may request, on an as needed basis, that a fuel additive be added to deliveries of diesel fuel or other Fuel, if appropriate. Vendor shall provide and add such additive to the Fuel.

**(c) Pricing.**

Vendor shall charge a Cooperative member for the Products pursuant to the terms set forth in a Purchase Agreement.

**(d) Fuel Pools.**

An Approved Vendor may, if requested by the Cooperative, submit executable price bids to provide fixed-rate Fuel and related services to Cooperative members participating in one or more specific Fuel Pool(s) executed by the Cooperative during the Panel Term, and the Cooperative may choose Vendor as the Selected Vendor for a specific Fuel Pool upon the Cooperative's finding that Vendor's Fuel service represents best value for Cooperative members that wish to participate in a specific Fuel Pool.

The Cooperative reserves the right, in its sole discretion based upon the anticipated needs or requirements for a particular Fuel Pool or Fuel Pools, to seek fixed-price bids from only a portion of a panel of Awarded Vendors. Vendor is not guaranteed the opportunity to bid on any individual Fuel Pool.

**(e) Compliance with Applicable Laws.** Vendor certifies that Vendor and individuals performing services under the Agreement have obtained and will continue to maintain during the entire term of this Contract all permits, approvals, licenses, and/or bonds necessary for lawful performance of their obligations under this Contract. Vendor further agrees and certifies that Vendor shall comply in all respects with all applicable federal, state, and local laws, rules, regulations, and other requirements of legal authorities relating to products or services to be provided under this Contract including but not limited to all laws, rules, regulations and other requirements of legal authorities in the subject jurisdiction of a Cooperative member.

**3. Service to Cooperative**

**(a) Marketing Strategy.** During the Panel Term, Vendor agrees to assist the Cooperative and the Cooperative Administrator with the development and implementation of a Fuel procurement strategy for the Cooperative to benefit Cooperative members.

**(b) Sales through Cooperative.** An Approved Vendor agrees to market fixed-rate Fuel to Texas school districts only through the Fixed-Rate Fuel Program and not market or provide fixed-rate Fuel for awarded Fuels to Texas school districts during the Panel Term except through the Fixed-Rate Fuel Program.

**(c) Service to Cooperative.** Vendor shall promptly respond to the Cooperative Administrator's questions or concerns through a phone call, email or other appropriate means and shall make commercially reasonable efforts to resolve billing, account management, customer service or other concerns raised by the Cooperative Administrator within 30 days after receipt of written notice of such concerns.

**4. Cooperative Administrative Fee**

**(a) Cooperative Administrative Fee.** As consideration for the services provided by the Cooperative and Cooperative Administrator in organizing Fuel Pools and administering the Fixed-Rate Fuel Program, Vendor shall pay the Cooperative the administrative fee calculated as set forth in this Section E.4 ("Cooperative Administrative Fee" or "Administrative Fee").

For all Purchase Agreements entered into with Cooperative members during the Vendor's Panel Term, Vendor shall pay the Administrative Fee based on a Cooperative member's invoiced amounts. Such payments will be made by Vendor monthly and within thirty (30) days of the date Cooperative member is invoiced. Payments shall be made to the following address: TASB Energy Cooperative; Attn: Accounting Manager; 12007 Research Boulevard; Austin, TX 78759.

**(b) Calculation of the Administrative Fee.** For each Cooperative member Purchase Agreement for fixed-rate Fuels, the Cooperative Administrative Fee shall be calculated and remitted as follows:

- Five cents (\$0.05) per gallon for the first 500,000 gallons delivered to the Cooperative member under the Purchase Agreement;
- Two cents (\$0.02) per gallon for gallons 500,001 through 1,000,000 delivered to the Cooperative member under the Purchase Agreement; and
- One-half cent (\$0.005) per gallon for gallons 1,000,000 and above delivered to the Cooperative member under the Purchase Agreement.

The Cooperative reserves the right, in its sole discretion, to reduce the Administrative Fee for any fuel type at any time. In the event the Cooperative reduces the Administrative Fee for a particular Fuel or Fuels, Vendor shall ensure that the applicable Purchase Agreement with a purchasing Cooperative member reflects and discloses the actual Administrative Fee for the subject purchase. Vendor must incorporate the applicable Cooperative Administrative Fee into the price of the Fuel, collect the Administrative Fee from Cooperative members participating in a Fuel Pool through billing, and report and remit payment of the Administrative Fee to the Cooperative. To the extent a price quoted by Vendor for a Cooperative member purchase included an Administrative Fee amount greater than the amount ultimately charged by the Cooperative, the Vendor shall reduce the Fuel price by the amount of the decrease in the Administrative Fee.

**(c) Audits.** Within five business days of written request to Vendor, Vendor shall provide the Cooperative Administrator all reasonable documentation requested to determine Cooperative member purchases under the Contract and support calculation of any Administrative Fee. Such documentation may include, but shall not be limited to, copies of Purchase Agreements, invoices sent by Vendor to Cooperative members, Fuel gallons delivered, and remaining Fuel under pending Purchase Agreements.

## **5. Prevailing Wages, Bonding and Insurance Requirements**

Vendor must comply with any applicable prevailing wage rate requirements under the federal Davis-Bacon and/or state or local law, including but not limited to Chapter 2258 of the Texas Government Code. Vendor must provide any applicable performance and payment bonds as required by law, including but not limited to Chapter 2253 of the Texas Government Code, or as requested by a Cooperative member.

Vendor must maintain appropriate and sufficient insurance, including without limitation such workers' compensation insurance as may be required by state or local law or policy, necessary to protect Vendor and the Cooperative and its members from all claims for bodily injury, death, or property damage that might arise from the performance by Vendor or its employees or agents of any service under the Contract; however, the existence of such insurance does not relieve Vendor of full responsibility and liability for damages, injury, death, or loss as described or as otherwise provided by law.

## **6. Time of the Essence**

Time is of the essence in Vendor's performance of the Contract.

## **7. DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY**

THE COOPERATIVE AND THE COOPERATIVE ADMINISTRATOR, TASB, DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO THE AVAILABILITY, ACCURACY, CONTENT OR ANY OTHER ASPECT OF ANY INFORMATION, PRODUCT, OR SERVICE FURNISHED UNDER THE CONTRACT AWARD, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITH RESPECT TO ANY AND ALL CAUSES OF ACTION ARISING UNDER OR RELATED

TO THE CONTRACT, NEITHER THE COOPERATIVE NOR TASB, NOR THEIR RESPECTIVE OFFICERS, BOARD MEMBERS, EMPLOYEES OR AGENTS, IS LIABLE TO VENDOR UNDER ANY CIRCUMSTANCES FOR LOST REVENUE, DATA OR PROFITS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, EVEN IF THE COOPERATIVE AND/OR TASB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY PROVIDED BY LAW, IN NO EVENT WILL THE COOPERATIVE AND/OR TASB'S TOTAL JOINT LIABILITY TO VENDOR EXCEED THE AMOUNT OF THE ADMINISTRATIVE FEE PAID BY VENDOR DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. IN ADDITION, VENDOR EXPRESSLY AGREES THAT NEITHER THE COOPERATIVE NOR THE COOPERATIVE ADMINISTRATOR, TASB, IS IN ANY WAY LIABLE TO VENDOR FOR ANY ACTIONS, INACTIONS, PERFORMANCE OR NON-PERFORMANCE OF A COOPERATIVE MEMBER UNDER ANY PURCHASE AGREEMENT OR OTHERWISE.

### **8. Force Majeure**

This section E.8 addresses matters of Force Majeure in relation to the Contract as between the Cooperative and Vendor. Matters of force majeure as between the Cooperative member and Vendor in regard to a Purchase Agreement shall be governed by the applicable provision(s) of the Purchase Agreement.

The term Force Majeure includes, but is not limited to, governmental restraints or decrees, provided they affect all companies in Vendor's industry equally and are not actions taken solely against Vendor; acts of God (except natural phenomena, such as rain, wind, or flood, which are normally expected in the locale in which performance is to take place); work stoppages due to labor disputes or strikes; fires; explosions; epidemics or pandemics; riots; war; rebellion; or sabotage.

The Cooperative, Cooperative members, and Vendor are required to use due caution and preventive measures to protect against the effects of Force Majeure, and the burden of proving that Force Majeure has occurred rests on the party seeking relief under this section E.8. The claiming party must promptly notify the other party in writing, citing the details of the Force Majeure event, use due diligence to overcome obstacles to performance created by the Force Majeure event, and resume performance immediately after the obstacles have been removed, provided the Contract has not been terminated in the interim.

Delay or failure of performance of the Contract caused solely by a Force Majeure event will be excused for the period of delay caused solely by the Force Majeure event, provided the party claiming the event promptly notifies the other party in writing. Neither party shall have any claim for damages against the other resulting from delays caused solely by Force Majeure. The Cooperative will not be responsible for any cost incurred by Vendor because of a Force Majeure event. A Cooperative member will not be responsible for any cost incurred by Vendor because of the Force Majeure event unless an authorized representative of the Cooperative member has requested, in writing, that Vendor incur such cost in connection with any delay or work stoppage caused by the Force Majeure event.

Notwithstanding any other provision of this section E.8, in the event Vendor's performance of its obligations under the Contract is delayed or stopped by a Force Majeure event, the Cooperative may, at its sole option, terminate the Contract in accordance with section E.9 (Remedies for Default and Termination of Contract) of these Terms and Conditions. This section E.8 does not limit or otherwise modify any of the Cooperative's rights as provided elsewhere in the Contract.

### **9. Events of Default and Remedies**

This section E.9 addresses events of default and remedies in relation to the Contract as between the Cooperative and Vendor. Events of default and remedies as between the Cooperative member and Vendor in regard to a Purchase Agreement shall be governed by the applicable provision(s) of the Purchase Agreement.

Except as otherwise provided for in these Terms and Conditions, either party (Cooperative or Vendor) may terminate the Contract in whole or in part in the event of the other party's substantial failure to fulfill its obligations under the Contract through no fault of the terminating party; provided, however, that the defaulting party is given at least 10 business days prior written notice of the default and intent to terminate (delivered by certified mail, return receipt requested, or other method that similarly documents receipt), and, to the extent the default is capable of being cured, a 10 business day opportunity to remedy the default to the satisfaction of the terminating party (or, in the event of default based on Vendor's failure to timely remit the service fee due the Cooperative, such longer cure period as may be established by Cooperative policy.)

At the Cooperative's option and in addition to any other remedies it may have available, the Cooperative may terminate the Contract if Vendor fails to adhere to or violates any of the provisions of these Terms and Conditions, including the certifications. Without limiting the scope of the foregoing, one or more of the following constitute grounds for termination:

- 1) Materially misleading or false statement(s) in Vendor's Proposal;
- 2) Delivery of product or services that are defective or substandard or fail to pass product inspection;
- 3) Failure to meet required delivery schedules;
- 4) Failure to timely remit any Administrative fee due the Cooperative under the Contract;
- 5) Failure to provide, within a reasonable time and where required by the Contract, information reasonably requested by the Cooperative or Cooperative Administrator including, but not limited to, information requested E.4(c) (Audits) of these Terms and Conditions;
- 6) Using a form of agreement for the purchase of fixed-rate Fuels by Cooperative members other than the Purchase Agreement form as provided in Section E.2 (Service to Cooperative Members; Purchase Agreements);
- 7) Selling non-awarded items under the Contract;
- 8) Failure to perform Vendor's obligations under the Contract and/or repeated failure to perform Vendor's obligations under Purchase Agreements with Cooperative members.

Notwithstanding any other provision of this section E.9, in the event of Vendor's default under or breach of any provision in the Contract, the Cooperative reserves the right to enforce the performance of the Contract in any manner prescribed by law or deemed to be in the best interest of the Cooperative or necessary or appropriate to protect or provide best value to Cooperative members.

Without limiting the scope of the foregoing, the Cooperative, acting by or through the Cooperative Administrator, may temporarily inactivate (suspend) Vendor's Contract with or without prior notice to Vendor if the Cooperative or Cooperative Administrator reasonably determines that that there has been a breach under the Contract or any other Cooperative contract with Vendor, including but not limited to nonpayment of service fees, or that there is a potential policy, public health, or safety issue to warrant such action. The temporary inactivation may remain in effect pending further action or termination of the Contract by the Cooperative. Vendor remains liable for all obligations and responsibilities incurred prior to and during any temporary inactivation and prior to termination, as applicable.

In the event a Vendor's Contract is terminated early based on Vendor's default or breach of contract:

- 1) Vendor agrees that it shall continue to serve the Cooperative members for the remainder of the terms of the applicable Purchase Agreements but shall not continue to charge the Cooperative members for the Administrative Fee. 2) The Cooperative shall be entitled to actual, direct damages which shall be calculated as the sum of the Administrative Fee that would have been collected from the Cooperative members by Vendor and remitted to the Cooperative for the remainder of the Term if the Contract had not been terminated, and the Cooperative shall be entitled to recover its reasonable attorney's fees and costs.

3) The Cooperative reserves the right to award the terminated Contract, or any portion thereof, to the next Proposer the Cooperative determines to provide best value to Cooperative members.

The Cooperative will not be liable to Vendor for any damages (including, but not limited to, loss of profits or loss of business, or any special, consequential, exemplary, or incidental damages) resulting from termination based on Vendor's default or breach of contract.

If any delay or failure of performance is caused by a Force Majeure event as described in section E.8 (Force Majeure) of these Terms and Conditions, the Cooperative may, in its sole discretion, terminate the Contract in whole or part, provided such termination complies with the procedures set out above. Any Contract termination resulting from any cause other than a Force Majeure event will be deemed a valid reason for the Cooperative not considering any future proposals from the defaulting Vendor.

#### **10. Duty to Mitigate**

Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Parties' performance or non-performance under the Contract.

#### **11. Indemnification**

Vendor agrees to defend, indemnify, and hold harmless the Cooperative, TASB, and Cooperative members, and their officers, board members, agents and employees, from and against all third-party claims, actions, suits, liability, liens, loss and damage of any character, type, or description, including without limitation all expenses of litigation, court costs and attorney's fees, arising out of or related to (a) injury or death to any person or damage to any property related to the acts of Vendor or its agents, subcontractors, or employees in the execution of or performance under the Contract or a Purchase Order, as applicable; and (b) Vendor's negligence, misconduct, breach of contract or other failure to comply with its obligations in the execution or performance under the Contract or a Purchase Agreement, as applicable.

### **F. Miscellaneous**

#### **1. Assignment**

Vendor may not sell, assign, transfer, convey, or subcontract any Purchase Agreement without the prior written consent of the Cooperative member as required by the Purchase Agreement, and the prior written consent of the Cooperative. Vendor may not sell, assign, transfer, convey or subcontract any responsibility or obligation created by the Contract in regard to the Cooperative without the Cooperative's written consent, and the Cooperative may impose reasonable conditions upon the granting of such consent, including without limitation the requirement that (i) Vendor also assigns its obligations under all Purchase Agreements to the party to which the Contract is assigned ("Assignee") and (ii) the Assignee assumes and is subject to all the obligations, terms and conditions in the Contract and in the Purchase Agreements.

#### **2. Notices**

Unless otherwise provided for in this Proposal Invitation, any written notice or other communication required by the Contract or by law will be conclusively deemed to have been given and received on the third business day after such written notice has been deposited in the U. S. Mail, properly addressed, and with sufficient postage affixed thereto, provided that actual notice may also be given via electronic mail or in any other manner used in commerce. If the conclusion of any time period provided for in these Terms and Conditions falls on a weekend or a federal holiday, the conclusion of such time period shall be deemed to be extended until the next business day. Otherwise, references to time periods measured by days shall mean calendar days unless business days are specifically designated. Notices to the Cooperative shall be sent to the address listed below. A Party may change its addresses by providing notice of same in accordance herewith.

Notices and Communications to Cooperative:

TASB Energy Cooperative  
Attn: Adrian Porras, Director  
Address: 12007 Research Blvd.  
Austin, TX 78759  
Email: [Adrian.Porras@tasb.org](mailto:Adrian.Porras@tasb.org)

**3. Equal Employment Opportunity (EEO) Disclosures**

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which Vendor's primary place of business is located. In accordance with such laws, regulations and executive orders, Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status, disability or genetic information, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies.

**4. Applicable Law, Venue and Dispute Resolution**

The Contract is governed by and will be construed according to the laws of the State of Texas, including the Uniform Commercial Code (UCC) as adopted in the State of Texas as effective and in force on the date of the Contract. Venue for any litigation concerning the Cooperative or TASB lies in Austin, Travis County, Texas, and venue for any litigation between a Cooperative member and Vendor arising under the Contract lies in the home county of the member. The parties have the mutual affirmative duty to attempt to resolve any disputes that arise under the Contract in good faith at the least possible expense prior to the initiation of any type of judicial or administrative proceeding.

**5. Waiver**

No claim or right arising out of a breach of the Contract can be discharged in whole or part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. A party's failure to require strict performance of any provision of the Contract does not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision.

**6. Interpretation – Parol Evidence**

This writing is intended by the parties as a final expression of their agreement and a complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties and no usage of the trade is relevant to supplement or explain any terms used in the Contract. Acceptance or acquiescence in a course of performance rendered under the Contract is not relevant to and does not determine the meaning of the Contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection.

**7. Binding Effect**

If any term or condition of the Contract is held invalid or unenforceable, the remainder of the Contract will not be affected and will be valid and enforceable.

**8. Invalid Term or Condition**

If any term or condition of the Contract is held invalid or unenforceable, the remainder of the Contract will not be affected and will be valid and enforceable.

**9. Right to Assurance**

Whenever the Cooperative in good faith has reason to question Vendor's intent to perform, the Cooperative

may demand that Vendor give written assurance of its intent to perform. In the event that a demand is made and no assurance is given within 5 days, the Cooperative may treat the failure as an anticipatory repudiation of the Contract.

**10. Remedies Cumulative**

The remedies available under this Contract are in addition to any other remedies that may be available under law or in equity.

**11. Signatures**

Except as otherwise specifically required in these Terms and Conditions, all notices, requests, amendments and other written documentation required or authorized under the Contract may be provided electronically or as an imaged document, and an electronic or facsimile signature shall be deemed an original.

**12. Right of Setoff**

Any indebtedness or obligation owed by Vendor or Vendor's affiliates to the Cooperative may be appropriated and applied by the Cooperative at any time, and from time to time, on any indebtedness or other obligation owed by the Cooperative to Vendor or Vendor's affiliates, whether such indebtedness or other obligations are now existing or hereafter arise, and whether under the Contract or otherwise. It is further understood and agreed that this right of setoff is in addition to, and not in lieu of, any other right, remedy or recourse which is available to the Cooperative either at law or equity, and that failure to exercise such right of setoff in any instance shall not constitute a waiver of such right.



# ATTACHMENT 1

## TRANSPORTATION FUEL PURCHASE AGREEMENT

### FOR TASB ENERGY COOPERATIVE MEMBER PURCHASERS FIXED-RATE TRANSPORTATION FUEL PROGRAM

PLEASE RETURN ACCEPTANCE BY FAX TO SELLER AT:

- SELLER'S NAME:
- SELLER'S ADDRESS:
- SELLER'S TELEPHONE:
- SELLER'S FAX:
- SELLER'S EMAIL:

- COOPERATIVE MEMBER PURCHASER'S NAME:
- PURCHASER'S ADDRESS:
- PURCHASER'S TELEPHONE:
- PURCHASER'S FAX:
- PURCHASER'S EMAIL:

Subject to the terms and conditions contained in this Transportation Fuel Purchase Agreement ("Agreement"), Purchaser agrees to purchase, and Seller agrees to sell, the following product(s) at the price and in the quantities as set forth in this Agreement. Seller and Purchaser may be referred to individually as a "Party" and collectively as "Parties" herein.

#### I. PRODUCTS AND PRICING

1. **PRODUCT(S):** \_\_\_\_\_

2. **PRICE PER GALLON:** \_\_\_\_\_ ("Contract Price")

3. **VOLUME(S):** \_\_\_\_\_ ("Contract Volume")

4. **DELIVERY PERIOD:** \_\_\_\_\_ through \_\_\_\_\_ ("Delivery Period")

5. **DELIVERY ADDRESS** [Insert full delivery address]: \_\_\_\_\_

6. **CONTRACT TERM:** This Agreement begins on the date it has been executed by both Parties and, unless terminated earlier as provided for herein, ends on the 90<sup>th</sup> day after the date of the last delivery.

#### 7. OTHER PRODUCT AND PRICING INFORMATION:

**RACK:**  Yes  No    **DELIVERED:**  Yes  No    **F.O.B.:** Insert F.O.B address

**GALLONS:**  Net  Gross    **DELIVERY FEES:**  Included  Excluded

**TAXES:** Excluded    **SUPERFUND:** N/A    **ENVIRONMENTAL FEES:** Excluded

Prices exclude all taxes and fees. Subject to Article II, Section 16, Purchaser is responsible for all applicable taxes and fees and Purchaser will be billed for all taxes and fees as a separate line item. Seller will not be responsible for any taxes or fees associated with any changes or modification in Purchaser's tax status or tax rates. Purchaser acknowledges that taxes and fees

are subject to change from time to time without notice and, subject to Article II, Section 16, Purchaser shall be responsible for all taxes and fees including, without limitation, superfund fees, whether existing at the time of execution of this Agreement or subsequently imposed.

#### **8. FREIGHT IF BILLED SEPARATELY:**

Purchaser will be billed at Seller's freight cost without markup. Freight rates are based on full transport loads of 7500 gallons for diesel fuel and 8500 gallons for gasoline. Prices per gallon will be adjusted as appropriate in cases where transport loads are less than the minimum gallon loads identified in this paragraph. In these cases, Purchaser will be billed the adjusted freight rate per gallon times the number of gross gallons received.

Seller shall use commercially reasonable efforts to minimize delivery costs. If freight rates have increased by 25 percent or more since Purchaser's most recent delivery, Seller shall notify Purchaser in advance and receive written confirmation from Purchaser to proceed prior to scheduling delivery and incurring costs. Purchaser shall not be responsible for freight rates in excess of 125 percent of the rate for Purchaser's most recent scheduled delivery unless Purchaser authorizes Seller to proceed with delivery in accordance with this Section.

**9. PURCHASER'S CREDIT TERMS:** All payments shall be made in United States dollars.

### **ARTICLE II: ADDITIONAL TERMS AND CONDITIONS OF SALE**

#### **1. RATABLE USAGE.**

- a. During the Delivery Period of this Agreement, Purchaser shall use commercially reasonable efforts to lift each Product at each delivery point in accordance with the Ratable Schedule ("Schedule") which is attached to this Agreement as Exhibit A and made a part of this Agreement for all purposes. Should Purchaser fail to lift the total number of gallons indicated for a particular month, Purchaser may make up the shortage at any time, without penalty, prior to the end of the Delivery Period. Subject to force majeure or early termination as provided in this Agreement, Purchaser shall purchase the Contract Volume and lift such total number of gallons by the end of the Delivery Period.
- b. If Purchaser purchases more gallons during the Delivery Period than the Contract Volume, the additional gallons will be priced at a rate negotiated prior to delivery.

**2A. SCHEDULED DELIVERIES.** Purchaser shall notify Seller of the date on which a delivery is to be made and the number of gallons to be delivered (each a "Scheduled Delivery"). Seller shall immediately notify Purchaser if Seller is or will be unable to deliver the Product in accordance with the Schedule or to make a Scheduled Delivery. Each Scheduled Delivery shall be credited against the Contract Volume.

- a. **Scheduled Deliveries Not Taken by Purchaser:** In the event Purchaser fails to take a Scheduled Delivery of any portion of the Product during the Delivery Period, through no fault of Seller, and does not take delivery within five (5) days of the scheduled date, the Parties shall reconcile for the undelivered quantities as follows:
  - (i) If the then current market price is less than the Contract Price, Purchaser shall pay Seller the positive amount resulting from the Contract Price minus the then current market price for the Product (i.e. the loss to Seller per gallon) multiplied by the number of gallons of Product scheduled but not delivered.
  - (ii) If the then current market price is greater than the Contract Price, Seller shall pay to Purchaser the positive amount resulting from the then current market price for the Product minus the Contract Price (i.e. the gain to Seller per gallon) multiplied by the number of gallons of Product scheduled but not delivered.

- b. **Scheduled Deliveries Not Completed by Seller.** If Seller fails to make a Scheduled Delivery of any portion of the Product to Purchaser during the Delivery Period, through no fault of Purchaser, and does not make delivery within five (5) days of the scheduled date, Seller agrees to pay Purchaser the positive amount, if any, resulting from the then current market price for the Product minus the Contract Price (i.e. the gain, if any, to Seller per gallon) multiplied by the undelivered quantity of Product.

## 2B. ACCOUNT RECONCILIATION.

- a. **Notice of Remaining Contract Volume Prior to End of Delivery Period.** 90 days prior to the end of the Delivery Period, Seller shall provide Purchaser with an account reconciliation showing the number of gallons remaining under the Contract Volume that Purchaser has not lifted or Seller has not delivered.
- b. **Account Reconciliation at End of Delivery Period.** No later than 60 days after the date of the last delivery under this Agreement, Seller shall provide Purchaser with an account reconciliation showing the number of gallons under the Contract Volume that Purchaser has not lifted or Seller has not delivered, if any, that have not been accounted for as set forth in Article II, Section 2A.
- c. If, at the end of the Delivery Period, Purchaser has not lifted the full Contract Volume and performance was not otherwise excused by a provision of this Agreement or other written agreement of the parties, Seller shall bill or pay Purchaser for any unused or undelivered gallons of the Contract Volume as follows:
- i. If the Contract Price exceeds the market price on the fifth day following the end of the Delivery Period, Seller shall invoice Purchaser for the positive difference between the Contract Price and such market price (i.e. the loss to Seller per gallon) multiplied by the number of Contract Volume gallons required, but not scheduled, by Purchaser during the Delivery Period. Invoices under this Section shall be paid in accordance with Article II, Section 3.
  - ii. If the market price per gallon on the fifth day following the end of the Delivery Period exceeds the Contract Price, Seller shall, within 30 days, pay Purchaser the positive difference between such market price and the Contract Price (i.e. the gain to Seller per gallon) multiplied by the number of gallons required, but not scheduled, by Purchaser during the Delivery Period.
- d. **Documentation.** Upon request, Seller shall provide Purchaser documentation supporting the calculation of any amounts to be credited or paid under Article II, Section 2A or Section 2B.

**3. PAYMENT TERMS.** All invoices are payable 45 days from date of delivery of the Product. Payment may be made by check, warrant or electronically using a method agreed to by the Parties. All undisputed amounts not paid by the 46<sup>th</sup> day after the date of delivery of the Product shall bear interest at the rate provided for in Section 2251.025 of the Texas Government Code, or successor statute. If Purchaser disputes an invoice, it shall notify Seller of the dispute not later than the 21<sup>st</sup> day after receipt of the invoice and provide Seller with an explanation of the dispute. Upon resolution of the dispute, any amount subsequently found to be owed to Seller shall be paid by Purchaser in accordance with Texas Government Code Chapter 2251.

## 4. DEFAULT AND REMEDIES.

- a. **Event of Default and Termination.** For purposes of this Agreement, a default by a Party includes (i) the making of any materially false or inaccurate representation in this Agreement which the Party does not cure after at least ten business days written notice; (ii) the failure to materially observe or comply with any provision or covenant in this Agreement which the Party does not cure after at least ten business days written notice; or (iii) a repeated failure (defined as at least two times) to make or accept a Scheduled Delivery of the Product unless otherwise agreed to by the Parties in writing or unless otherwise excused by a provision of this Agreement. In the event of a Party's default, the non-defaulting Party may terminate this Agreement by providing at least ten days written notice of its intent to terminate and may seek all legal and equitable remedies permitted by law. The non-defaulting Party may also seek actual, reasonable attorneys' fees, costs and expenses incurred in connection with the other Party's default.

- b. **Suspension for Nonpayment.** In addition, in the event any undisputed invoice is not paid when due, Seller, at its option, may suspend or condition further delivery of the Product, provided that Seller gives Purchaser written notice advising that Seller has not received payment and intends to suspend or condition further delivery as a result of such nonpayment, and Purchaser fails to pay the amount due on or before the 10<sup>th</sup> day after such notice is given.
- c. **Mitigation of Damages and Setoff.** Each Party shall have the obligation to take commercially reasonable action to mitigate its damages. Upon the occurrence of any default, the non-defaulting Party may set off against the indebtedness any amounts owing by the non-defaulting Party to the defaulting Party, whether or not those amounts are immediately payable.
- d. Upon an event of default by Purchaser, Seller shall have the right to require Purchaser to make available any unpaid Product, the right to take possession of such Product, and the right to sell and dispose of such Product.
- e. The Parties agree that neither the TASB Energy Cooperative nor its administrator, the Texas Association of School Boards, Inc., shall in any way be liable to either Party for a Party's default, performance or nonperformance under this Agreement.

5. **SELECTION OF PRODUCTS.** Determination of the suitability of any Product for the contemplated use is the sole responsibility of Purchaser and no liability shall be imposed upon Seller in connection therewith.

6. **RISK OF LOSS AND TITLE.** Risk of loss and title to products shall remain with Seller until Purchaser receives physical possession of the Product.

7. **WARRANTIES.** Seller warrants that the Product delivered to Purchaser will conform to the description on the first page of this Agreement (and related specifications).

8. **ENERGY COOPERATIVE ADMINISTRATIVE FEE INCLUDED:** The Contract Price includes the administrative fee provided for under the TASB Energy Cooperative ("Cooperative") contract award to Seller, which fee is based on the total number of gallons of Fuel purchased by Purchaser under this Purchase Agreement and calculated as five cents (\$0.05) per gallon for the first 500,000 gallons delivered to Purchaser under this Agreement; two cents (\$0.02) per gallon for gallons 500,001 through 1,000,000 delivered to Purchaser under this Agreement; and one-half cent (\$0.005) per gallon for gallons 1,000,000 and above delivered to Purchaser under this Agreement. The administrative fee shall be paid by Seller to the Cooperative in accordance with the terms set forth in that certain contract between the Cooperative and Seller in effect at the time of this Agreement. In no event shall the administrative fee be included in the calculation or collection of any liquidated damages amount charged to Purchaser under Article II, Section 2A or 2B. In the event the contract between the Cooperative and Seller requires Seller to cease collection of all or part of the administrative fee, Seller shall in turn cease collection of such administrative fee from Purchaser and reduce the Contract Price by the amount of the administrative fee no longer being collected.

9. **LIMITATION OF LIABILITY. UNLESS AN EXPRESS REMEDY IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF EACH PARTY TO THE OTHER PARTY IS LIMITED TO DIRECT ACTUAL DAMAGES.** Further, to the extent permitted by law, neither Party shall be liable to the other Party for damages, whether arising from performance of obligations under this Agreement, tort (including negligence), or otherwise for loss of anticipated profits, loss by reasons of plant shutdown, non-operation or increased expense of operation, service interruption, claims of customers, cost of money, loss of use of capital or revenue, or for any special, incidental, or consequential loss or damage.

10. **DEFECTS.** Purchaser shall, within 30 days after delivery of the Product, notify Seller of any alleged defect in the Product, or the failure of the Product to conform to any specifications. If, following such Notice, Seller and Purchaser agree that there exists such a defect or failure to conform due to the fault of Seller, the Parties shall attempt to negotiate a resolution. If unable to come to a resolution, (i) the defective Product shall be returned, at Seller's expense, to Seller, properly safeguarded against normal transit hazards as Seller may require, for replacement by Seller, or (ii) Purchaser and Seller shall negotiate an agreed amount to be deducted from the Contract Price, the payment of which shall operate as a full release of Seller. Purchaser's failure to notify Seller of any such claimed defect or failure to conform within the thirty-day period shall constitute Purchaser's complete waiver of any such claim with respect to defects or nonconformance, and Purchaser's release and covenant not to sue Seller with respect to such claim.

11. **AUTHORITY.** No agent, employee, or representative of Seller or Purchaser has any authority to bind either Party to any affirmation, representation, or warranty concerning the Product or this Agreement unless an affirmation, representation, or warranty made by an agent, employee, or representative is specifically included in writing in these terms and conditions or as an amendment thereto.

12. **NOTICE.** Any notice, designation, consent, delivery, approval, offer, acceptance, statement, request, or other communication required or allowed under this Agreement (“Notice” or in the verb form “Notify”) shall be in writing. Any action required under this Agreement that is a term within the definition of “Notice” also shall be in writing. All notices required in this Agreement shall be deemed effective if made in writing and delivered to the recipient’s address listed on the first page of this Agreement by any of the following means: (i) hand delivery, (ii) registered or certified mail, postage prepaid, with return receipt requested, (iii) first class or express mail, postage prepaid, or (iv) overnight courier service. Notice made in accordance with this paragraph shall be deemed delivered upon receipt if delivered by hand, on the third business day after mailing if mailed by first class, registered, or certified mail, or on the next business day after mailing or deposit with an overnight courier service if delivered by express mail or overnight courier. Refusal by a party to accept a Notice shall not affect the giving of the Notice.

13. **INTERPRETATION, MODIFICATION AND ADDITIONAL TERMS.** Seller and Purchaser, as a final expression of their agreement and also as a complete and exclusive statement of the terms of their agreement, intend the terms and conditions contained in this Agreement. Acceptance or acquiescence in a course of performance rendered shall not be relevant to determine the meaning of these terms and conditions, even though the accepting or acquiescing Party has knowledge of the nature of the performance and opportunity for objection. These terms and conditions can be modified or rescinded only by a writing signed by duly authorized agents of both Seller and Purchaser. Notwithstanding any provisions therein to the contrary, any terms and conditions in a Party’s purchase order, acknowledgement form, confirmation, or other document issued by a Party which conflict with these terms and conditions or increase either Party’s obligations hereunder, are rejected and shall not be binding upon the Parties unless specifically identified and accepted in writing by a duly authorized agent of both Parties.

14. **DELEGATIONS AND ASSIGNMENT.** No delegation of any obligation owed by a Party, or of the performance of any obligation by a Party, shall be made without the written consent of the other Party. A Party may not assign its rights and obligations under this Agreement without the other Party’s written consent, which shall not be unreasonably withheld. Any delegation or assignment without the other Party’s written consent is void.

15. **WAIVER.** No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved Party.

16. **TAXES.** Purchaser represents that it is a local governmental entity that is exempt from sales, excise, and usage taxes. Purchaser shall pay all federal, state, or local taxes or charges relating to the sale, delivery, or use of the Product from which it is not exempt. Purchaser shall be responsible for all taxes whether existing at the time of execution of this Agreement or subsequently imposed.

17. **APPLICABLE LAW AND VENUE.** This Agreement and the relationship between the Parties shall be governed in all respects, whether as to validity, construction, capacity, performance, or otherwise, by the laws of the state of Texas. The Parties stipulate and agree that exclusive jurisdiction and venue for any cause of action arising between the Parties shall be in the state or Federal courts having subject matter jurisdiction and located in the county in which Purchaser’s main administration facility is located.

18. **RESPONSIBILITY TO WARN AND REPORT.** At and after title passes to Purchaser, Purchaser assumes all responsibility for warning Purchaser's personnel and any third parties on the premises of all hazards to persons and property. Purchaser also assumes the responsibility to warn and protect Purchaser's employees and others exposed to the hazards posed by Purchaser's storage and use of the Product. It is the responsibility of both Parties to comply with all relevant reporting obligations under the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. §§ 11001 *et seq.* (EPCRA, also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III)) resulting from the presence of the chemicals supplied under this Agreement.

19. **FORCE MAJEURE.** If, by reason of act of God, flood, storm, explosion, fire, labor trouble, strike, insurrection, riot, acts of the public enemy, pandemic or epidemic, or federal, state or local law, order, rule, or regulation affecting all similarly situated companies or entities, either Party ("Claiming Party"), without negligence and upon exercise of due diligence, is prevented from complying with any obligation, covenant, or condition in this Agreement, including but not limited to ability to accept delivery of Products, then, while so prevented, the condition shall be suspended or the obligation or covenant shall be extended, the Claiming Party shall be relieved of the obligation to comply with such obligation or covenant, and the Claiming Party shall not be liable for damages, including charges pursuant to Article II, Sections 2A or 2B, for failure to so comply.

20. **MISCELLANEOUS.**

a. **Binding Agreement.** Subject to Article II, Section 14, this Agreement shall bind and inure to the benefit of the parties and their respective legal representatives, heirs, successors, and assigns.

b. **Invalid Provision/Severability.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions of it. This Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

c. **Amendments.** No amendments, modifications, alterations, or additions to this Agreement shall be binding unless made in writing and signed by the Parties.

d. **Attorneys' Fees.** In the event of any litigation regarding the construction, enforcement, or validity of this Agreement, in addition to any other relief, the prevailing Party shall be entitled to recover its reasonable costs incurred, including attorneys' fees.

e. **Rule of Construction.** The judicial rule of construction requiring or allowing a document to be construed to the detriment or against the interests of the document's maker or drafter shall not apply to this Agreement.

f. **Headings.** The section headings in this Agreement are included solely for convenience and shall in no event affect or be used in connection with the interpretation of this Agreement.

g. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but together the counterparts shall constitute one and the same document.

h. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties, all prior negotiations and agreements, whether written or oral, having been merged into this Agreement.

i. **Time of Essence.** Time is of the essence in this Agreement. The Parties shall have the right to treat all time deadlines contained in this Agreement as material and to terminate this Agreement or exercise such other remedies as may be provided in this Agreement in the event such time deadlines are not met.



j. **Computation of Time.** In computing a time period prescribed in this Agreement, the day of the act or event shall not be counted. Unless the Agreement specifies business days, all subsequent days, including intervening weekend days and holidays, shall be counted in the period. The last day of the period so computed is to be included unless it is a weekend day or a legal holiday under federal law, in which case the period is to be extended to the next day that is not a weekend day or legal holiday. When the Agreement specifies business days, the computation of a time period shall exclude all weekends and holidays under federal law or the state law of the state in which Purchaser’s main administrative office is located. Further, for obligations of Purchaser, days on which Purchaser’s main administrative office is closed shall not be counted as a business day.

k. **Authority to Sign.** Each person signing this Agreement in a representative capacity on behalf of a Party warrants and represents to each other Party that (i) the person signing has the actual authority and power to so sign, and to bind his principal to the provisions of this Agreement, and (ii) all entity action necessary for the making of this Agreement has been duly taken. Either Party represents and warrants to the other Party that it has complied with all rules, regulations and laws relating to its authority to execute and perform the obligations under this Agreement.

l. **Signatures.** The Parties agree that they may transmit this Agreement for execution by electronic transmission. The Parties intend that electronic signatures on this Agreement shall be deemed an original and be binding on them.

m. **Non-Appropriation.** Seller acknowledges that Purchaser is a governmental entity and that Purchaser’s ability to perform its obligations under this Agreement is dependent upon the appropriation of public funds. The Parties agree that if the Delivery Period extends beyond Purchaser’s then current fiscal year into another fiscal year(s) and (i) Purchaser does not have an authorized multi-year funding source or (ii) otherwise has no legally available funds for the purchase of the Product, then this Agreement will terminate. Purchaser shall not be obligated to make contract payments beyond the amounts appropriated. However, if any funds are appropriated for Product costs, such funds shall be applied first to the cost of Product to be provided pursuant to this Agreement and any such funds shall not be used to pay for Product from any other vendor. Purchaser agrees to notify Seller in writing of such non-appropriation at the earliest practicable time subsequent to the failure to appropriate. As of the termination date under this Section, Seller shall have no further duty to supply Product to Purchaser.

n. **Support.** Seller shall maintain a telephone contact for customer service support for Purchaser. Purchaser may call the number listed on the last page of this Agreement for customer support, and Seller shall notify Purchaser of any new customer support telephone number.

o. **Survival.** Expiration of this Agreement or termination by either party shall not affect the rights and obligations of the Parties that accrued prior to expiration or the effective date of the termination. Payment obligations and any other provisions, which by their terms or their nature are intended to survive, shall survive the expiration or termination of this Agreement.

**WHEREFORE**, the Parties have caused this Agreement to be duly executed, and each of the undersigned below represent that they have been duly authorized to execute this Agreement by all necessary action and further affirm the representations and warranties as stated in Article II, Section 19.k of this Agreement as applicable to the Party.

\_\_\_\_\_  
**Purchaser**

\_\_\_\_\_  
**Seller**

\_\_\_\_\_  
**By (Name/Title – please print)**

\_\_\_\_\_  
**Account Executive’s Signature**

\_\_\_\_\_  
**Authorized Signature**  
**(Signer authorized to bind Purchaser to this Agreement)**

\_\_\_\_\_  
**Approved by Corporate Officer**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**  
**Customer Support Phone #: \_\_\_\_\_**

**TEC 109-26:  
PART TWO  
RACK RATE AND  
INDEX-PRICED FUELS**

## **GENERAL INFORMATION, PART TWO: RACK RATE AND INDEX-PRICED FUEL**

In this PART TWO of the Proposal Invitation, the Energy Cooperative is seeking proposals from qualified vendors interested in serving Cooperative members with spot **Fuel** purchases based on (i) rack rate per-gallon pricing for unleaded gasoline and diesel fuel and/or (ii) Oil Price Information Service (OPIS) pricing for unleaded gasoline and diesel fuel. Unleaded gasoline and diesel fuel are collectively referred to herein as "Fuel" or "Fuels".

### **PURPOSE OF THE CONTRACT**

The intent of **PART TWO** of this Proposal Invitation is to establish Contracts for the spot purchase by Energy Cooperative members of **Unleaded Gasoline and Diesel Fuel** at rack rate or index pricing. Contracts will be separately awarded for each Fuel type. Further, for unleaded gasoline and diesel, Contracts will be separately awarded for rack rate and OPIS.

This is a request for the mark-up or mark-down on Fuels based on the daily rack or index rate, as applicable. Purchases can be made by a Cooperative member at any time within the Contract term.

**Contracts awarded under this Proposal Invitation shall be for Fuel products only as set forth herein. AWARDED VENDORS SHALL NOT SELL OR PROPOSE TO SELL TO COOPERATIVE MEMBERS ANY EQUIPMENT, STORAGE TANKS, OR OTHER ITEMS NOT SPECIFICALLY INCLUDED IN THIS PROPOSAL INVITATION UNDER THIS CONTRACT. If a Cooperative member wishes to purchase goods or services from a Vendor that are not covered under the Vendor's Cooperative contract, such as storage tanks, such items must be procured separately in accordance with state law and local policy.**

### **VALUE OF CONTRACT**

The estimated number of gallons purchased through the current Cooperative contract for rack rate and index-priced Fuels is 7,000,000 gallons. However, this estimate is based on prior contracts for similar types of products and services and should not be construed to be a guarantee of either a minimum or maximum since usage is dependent upon Cooperative members' actual needs and available funding.

### **SERVICE FEE**

As set forth further in Section E.10(b) of the Rack Rate/Index-Priced Fuels General Terms and Conditions, an awarded Vendor under PART TWO of this Proposal Invitation must pay the Cooperative a service fee ("Service Fee" or "Cooperative Service Fee") as follows:

- Service Fee for **Rack Rate Unleaded Gasoline and Diesel Fuel**: One-half cent (\$0.005) per gallon
- Service Fee for **Unleaded Gasoline and Diesel Fuel – Oil Price Information Service (OPIS)**: One cent (\$0.01) per gallon

### **AWARD AND EVALUATION**

This Contract will be awarded based on the evaluation and award criteria set out in Section C.2 of the Rack Rate/Index-Priced Fuels General Terms and Conditions associated with this PART TWO of the Proposal Invitation.

### **TYPE OF CONTRACT AND PRICING**

This is a competitive "sealed proposal" based on the mark-up or mark-down on Fuel based on the daily rack rate or index price as applicable. Proposal pricing shall be stated as a plus (+) or minus (-) to the rack rate for racks in Texas or index price in Texas (or any other state you propose to serve) as applicable. All awarded pricing structures (mark-up or mark-down submitted in Proposer's Proposal) shall remain firm for the duration of the Contract. In the event of price decreases, such price decreases shall be allowed for all products.

Proposal pricing **does not** include transportation and delivery costs and applicable taxes and fees.

### **DELIVERY RESPONSE**

Routine delivery response to any Cooperative member shall be within 24-48 hours after receipt of a Purchase Order. Delivery shall be made during the ordering Cooperative member's normal business hours. A Cooperative member may request emergency delivery. An awarded Vendor shall use its best efforts to comply with rush or emergency requests. However, if the Vendor cannot fulfill the emergency delivery requirements, the Cooperative member may procure Fuel from alternative sources without penalty.

Fees for non-standard items requested or approved by a Cooperative member such as emergency or rush delivery, small load, increased delivery fee due to widespread fuel shortages or natural disaster requiring delivery from non-standard fuel access point, or similar non-standard fees shall only be invoiced if such fees were disclosed and approved in writing in advance by the purchasing Cooperative member.

## **RACK RATE/INDEX-PRICED FUELS GENERAL TERMS AND CONDITIONS**

### **A. General Provisions**

#### **1. Statement of Inclusion/Applicability**

The Rack Rate/Index-Priced Fuels General Terms and Conditions (“General Terms and Conditions” or “Terms and Conditions”) set out below shall apply to any Contract awarded under **PART TWO** of the Proposal Invitation for rack rate or index priced Fuels. These General Terms and Conditions apply to this Proposal Invitation and the proposing company’s response to this Proposal Invitation and are an integral part of any contract which is awarded or purchase order which is issued in association with this Proposal Invitation. Any reference to “Proposal Invitation” in these General Terms and Conditions shall **NOT** include **PART ONE**, Fixed-Rate Fuels.

#### **2. Organization and Section Titles**

The provisions of these Terms and Conditions are generally organized according to the stages of the procurement process: proposal, evaluation, award and performance. This organization of and the section titles used in these Terms and Conditions are for convenience and reference only, and in no way define, describe, extend, or limit the scope or intent of the provisions of any section of this document. Unless otherwise stated, any listing of factors or criteria in these Terms and Conditions does not constitute an order of preference or importance.

#### **3. Definitions**

As used in this Proposal Invitation and associated documentation, the following terms have the meanings set out below unless the context requires otherwise, regardless of whether initial capitalization is consistently used. Words used in the singular include the plural, and words used in the plural include the singular. To the extent terms are defined or used differently in different Proposal Invitation documents, substance prevails over form:

“**Awarded Items**” has the meaning set forth in section E.3 of the Terms and Conditions.

“**Awarded Pricing**” has the meaning set forth in section E.4 of the Terms and Conditions.

“**Administrator**” or “**Cooperative Administrator**” means the TASB Energy Cooperative’s administrator, the Texas Association of School Boards, Inc. (“TASB”).

“**Contract**” means the contract between the Cooperative and the successful proposer (vendor), which gives vendor the opportunity to serve Cooperative members based on the Cooperative’s acceptance of all or part of the Proposer’s Proposal, and is comprised collectively of the following:

- a) This Proposal Invitation
- b) Proposer’s Proposal;
- c) Notice of Award issued to Proposer by the Cooperative; and
- d) Purchase Order between a Cooperative member and Proposer, and any additional terms, conditions or instructions agreed to by Proposer that are consistent with these Terms and Conditions. (A Purchase Order between a Cooperative member and Vendor shall be deemed part of the Contract for the specific Cooperative member purchase only and for determination of the Service Fee as set forth in these Terms and Conditions. Purchase Order terms, including additional or supplemental terms, conditions, or instructions agreed to between a Vendor and a Cooperative member where permitted by these Terms and Conditions shall apply between the Cooperative member and Vendor as to the specific Cooperative member purchase only but shall not alter or affect the Terms and Conditions of the Contract as between the Cooperative in its own right and Vendor.)

**“Cooperative”** or **“Energy Cooperative”** means the TASB Energy Cooperative, including when acting by and through the Cooperative Administrator, unless a distinction is made otherwise.

**“Cooperative member”** or **“member”** means a local governmental entity (e.g., school district, city or county) or other governmental entity that is a member of the Cooperative and is eligible to purchase through a governmental purchasing cooperative or interlocal contract. The term “Cooperative member” or “Cooperative members” as used in this Proposal Invitation in reference to a purchasing entity may include, where appropriate, other organizations and entities which have the opportunity to purchase the goods or services under the Contract through a piggy-back or similar agreement as provided in this Proposal Invitation.

**“Fuel”** or **“Fuels”** means unleaded gasoline and/or diesel fuel.

**“Proposal Invitation”** means this Proposal Invitation and all associated documentation, including without limitation, these Terms and Conditions, the Additional Terms and Conditions, information, instructions, exhibits or attachments, forms, agreements, certifications, item specifications, addenda, supplements and/or clarifications, and any amendments hereto. For purposes of these Terms and Conditions, the term shall not include PART ONE, Fixed-Rate Fuels.

**“Proposal”** means Proposer’s complete and correct response to this Proposal Invitation, including all information, forms, agreements, certifications and other documentation required by this Proposal Invitation, properly submitted by Proposer’s duly authorized representative.

**“Proposal Due Date”** means the date and time specified in the Proposal Invitation, or any addenda thereto, by which Vendors are required to submit Proposals for this Proposal Invitation.

**“Proposer”** or **“Vendor”** means the company or firm that submits a Proposal or, depending on the context, the proposing company to which the Cooperative awards a Contract under this Proposal Invitation. (For purposes of the forms associated with this Proposal Invitation, “you”, “your”, “I” or “my” refer to Proposer or Vendor, as applicable.)

**“Purchase Order”** means a Cooperative member’s fiscal form or format or other agreement which is used in making a purchase from Vendor under a Contract for Rack Rate or Index-Priced Fuels. A Purchase Order may include a written or electronic purchase order, record of an online order, record of a purchasing card (P card purchase), or any other record or instrument used by a Cooperative member to document a Cooperative member’s authorized commitment to purchase awarded goods or services from a Vendor under a Contract.

**“Service Fee”** or **“Cooperative Service Fee”** has the meaning set forth in Section E.10(b) of these Terms and Conditions.

**“Vendor Invoice”** means Vendor’s billing form or other instrument, written or electronic, documenting charges for goods or services delivered to the Cooperative member under a Purchase Order under a Contract.

## **B. Proposal Requirements**

### **1. Specifications**

Unless otherwise specified, the specifications are intended to be non-proprietary and should be construed as such. The apparent silence of the specifications as to any detail, or the apparent omission from any specification of a detailed description concerning any point, will be interpreted to mean that only the best commercial practices will prevail, and the specification will be construed accordingly.

**NOTE:** If Proposer discovers or suspects an error in any item specification in this Proposal Invitation, including that the specification is proprietary where not intended, Proposer must notify the Cooperative Administrator of the error in writing at [ava.benford@tasb.org](mailto:ava.benford@tasb.org) immediately, but in no event later than the 10<sup>th</sup> business day before the Proposal Due Date.

### **2. Proposal Pricing**

Pricing must be provided in the form required by the specifications. Proposer's pricing must be equal to or better than pricing Proposer offers other similarly situated customers under similar circumstances, including those offered to other purchasing cooperatives. Pricing that is not considered equal or better could result in the Proposal being determined non-competitive and not considered for award.

Unless specified otherwise in this Proposal Invitation:

- a) A "cost plus" Proposal will not be accepted;
- b) Proposer will not include freight, transportation and delivery charges or costs or sales tax in Proposal pricing. (Freight, transportation and delivery charges, if applicable, are to be pre-paid by the awarded Vendor and, subject to section E.5 (Packaging, Transportation, and Delivery) of these Terms and Conditions, included as a separate item on the invoice to the ordering Cooperative member);
- c) Proposal pricing must include the Service Fee due pursuant to section E.10(b) (Service Fee) of these Terms and Conditions; and
- d) Proposal pricing must be firm for acceptance and the Cooperative's period for acceptance will be at least 120 calendar days from the Proposal Due Date.

### **3. Quality**

Unless otherwise indicated in this Proposal Invitation, proposed products must be new and in first class condition and must be warranted in the same manner and to the same extent as normally provided to other customers of Proposer. Additionally, proposed products must conform to the highest standards of manufacturing practice, including containers suitable for shipment and storage.

### **4. Deviations from Item Specifications or General Terms and Conditions**

Other than a deviation submitted in writing with the Proposal and **accepted by the Cooperative**, the Cooperative will hold Vendor accountable to the Cooperative and Cooperative members to perform in strict accordance with these Terms and Conditions and the item specifications as written. (For requirements for ancillary agreements between Cooperative members and Vendors for specific purchases, see section D.2 (Applicable Terms and Conditions; Ancillary Agreements).) Vendor must clearly note and explain in detail any and all limitations, exceptions, qualifications, special conditions, or other deviations (collectively "deviations") from these Terms and Conditions or any of the item specifications in the Proposal on the Deviation and Compliance form (or an attachment thereto) at the time the Proposal is submitted. Deviations must be specific to these Terms and Conditions or the item specifications and clearly identify the specific section or item to which the deviation applies. The Cooperative shall not be deemed to have accepted, and a Contract shall not be subject to, any term or condition included in Vendor's Proposal which differs from these Terms and Conditions unless Vendor has specifically identified the deviation on the Deviation and Compliance form and the deviation is accepted by the Cooperative.

The submission of a deviation or deviations may place Vendor at a competitive disadvantage or otherwise prevent the Cooperative from considering the Proposal on the affected item(s).

**The following Terms and Conditions are not subject to deviation. Any attempted deviation by Vendor to such Terms and Conditions, whether directly or indirectly, shall be deemed rejected by the Cooperative and, unless otherwise withdrawn by Vendor, may result in Vendor's Proposal being rejected in its entirety:**

- (a) Section B.9, Requirements of the Texas Public Information Act; Confidential Information;
- (b) Section B.12, Certifications;
- (c) Section D.2, Applicable Terms and Conditions; Ancillary Agreements;
- (d) Section E.6.b, Payments;
- (e) Section E.10, Reporting of Cooperative Member Purchases; Service Fees;
- (f) Section E.11, Disclaimer of Warranty and Limitation of Liability;
- (g) Section E.12, Sales Tax;
- (h) Section E.13, Indemnification;
- (i) Section E.14, Intellectual Property Infringement;
- (j) Section E.15, Remedies for Default and Termination of Contract;
- (k) Section E.16, Force Majeure;
- (l) Section F., Miscellaneous, including all subsections (F.1-F.12) thereto.

**Further, any deviation by Vendor which, directly or indirectly, seeks to add terms or requirements substantively similar to the following shall be deemed rejected by the Cooperative and, unless otherwise withdrawn by Vendor, may result in Vendor's Proposal being rejected in its entirety:**

- (a) Any deviation seeking to supersede these Terms and Conditions with Vendor's own agreement form, standard agreement, or terms and conditions;
- (b) Any deviation seeking to require the Cooperative, Cooperative Administrator, or any Cooperative member to indemnify or hold harmless Vendor.

The Cooperative may, in its sole discretion, seek clarification from and/or communicate with Vendor(s) regarding any submitted deviation(s), consistent with general procurement principles of fair competition. The Cooperative reserves the right to accept or reject a Proposal based upon any submitted deviation.

## **5. Addenda**

Any interpretation, correction or change to this Proposal Invitation will be made by addendum, and updated information contained in an addendum will prevail over the information contained in the original Proposal Invitation or a previous addendum. The Cooperative is the sole authority for the issuance of any addendum, and any communication related to this Proposal Invitation that is not from the Cooperative is invalid. Although the Cooperative may provide electronic notification when an addendum has been issued and the changes will be flagged, it is Vendor's responsibility to monitor the <https://www.tasbenergy.com> addendum into the Proposal. Vendor must acknowledge each addendum in accordance with the instructions accompanying the addendum.

## **6. [Intentionally omitted.]**

## **7. Proposal on All or Certain Items; Service Regions**

Unless otherwise specified, Vendor may propose on any or all items. Vendor should answer all questions related to each item on which Vendor wishes to propose and indicate "No Bid" for those items on which Vendor does not wish to propose. Failure to complete any item in the specifications will be deemed a no bid on that item. The Cooperative will consider items individually and make awards on each item independently, except for related items for which compatibility will be an element of consideration. In such cases, small groups of items may be considered as a unit.

Vendor's Proposal shall specify the regions and/or states that Vendor proposes to serve by completing the appropriate Proposal forms. Vendor shall specify only those regions or states for which Vendor is authorized either under applicable law to sell the proposed products. If Vendor proposes multiple products, and the regions or states which the Vendor is able to serve and proposes to serve differ by product, Vendor must specify the specific regions or states by product in its Proposal. **A Vendor may not select a region or state in its Proposal where Vendor is unable or unauthorized to sell a proposed product. If it is determined that a Vendor is unable, unauthorized, or refuses to provide any awarded product(s) or service(s) in a region or state specified in Vendor's Proposal, such inability, lack of authorization, or refusal shall be an event of default and subject to all remedies up to and including termination of Vendor's Contract.**

## **8. "All or Nothing" Awards**

Unless otherwise indicated in this Proposal Invitation, "all or nothing" Proposals are **not** acceptable and will be rejected. Vendor must be willing to accept a partial award for any combination of the items or services proposed and must be willing to share the business with any other successful Proposers.

## **9. Requirements of the Texas Public Information Act; Confidential Information**

### **(a) Vendor Compliance.**

**The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Proposal Invitation and any awarded Contract, and Vendor agrees that the Contract can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.**

Pursuant to Texas Government Code Sections 552.371 and 552.372, to the extent the Contract or any Purchase Order thereunder has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by a governmental body or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by a governmental body in a fiscal year of the governmental body, Vendor shall:

- 1) preserve all contracting information, as defined in Texas Government Code Section 552.003 ("Contracting Information"), related to the Contract or any Cooperative member Purchase Order thereunder as provided by the records retention requirements applicable to the governmental body for the duration of the Contract (including any Purchase Order thereunder);
- 2) promptly provide to the Cooperative or Cooperative member, as applicable, any Contracting Information related to the Contract that is in the custody or possession of Vendor on request of the Cooperative or Cooperative member; and
- 3) on completion of the Contract (including any Purchase Order thereunder), either:
  - (A) provide at no cost to the Cooperative or Cooperative member, as applicable, all Contracting Information related to the Contract (including any Purchase Order) that is in the custody or possession of Vendor; or

(B) preserve the Contracting Information related to the Contract (including any Purchase Order thereunder) as provided by the record retention requirements applicable to the Cooperative or Cooperative member, as applicable.

The Cooperative may not accept a Proposal or award a Contract to a Vendor that the Cooperative has determined has knowingly or intentionally failed to comply with Texas Government Code Chapter 552, Subchapter J, in a previous Proposal or Contract unless the Cooperative determines and documents that Vendor has taken adequate steps to ensure future compliance with the requirements of said Subchapter.

The Cooperative may not accept a Proposal or award a Contract to a Vendor that the Cooperative has determined has knowingly or intentionally failed to comply with Texas Government Code Chapter 552, Subchapter J, in a previous Proposal or Contract unless the Cooperative determines and documents that Vendor has taken adequate steps to ensure future compliance with the requirements of said Subchapter.

**(b) Confidential/Proprietary Information.**

**Proposer must clearly identify information in the Proposal that Proposer considers proprietary or confidential by completing the Confidential/Proprietary Information form. Further, for any other information provided by Vendor to the Cooperative after Contract award, Vendor shall clearly mark and identify any information that Vendor considers proprietary or confidential. The Cooperative will treat such information as confidential only to the extent allowable under the Texas Public Information Act (Chapter 552 of the Texas Government Code) or similar disclosure law.**

If Vendor fails to properly identify information that the Vendor considers proprietary or confidential, the Cooperative shall have no obligation to seek protection of such information from public disclosure should a member of the public or other third party request access to the information under the Texas Public Information Act or similar disclosure laws. **The Cooperative and its Administrator will not be responsible for Vendor's failure to clearly identify information Vendor considers confidential or proprietary.** Vendor may be notified of a third-party request for information that Proposer has identified in the Confidential/Proprietary Information form as proprietary or confidential when required by the Texas Public Information Act or similar disclosure law.

By submitting a Proposal, Vendor acknowledges that the Cooperative and the Cooperative Administrator will disclose information when required by law, even if such information has been identified herein as information Vendor considers confidential or proprietary.

**10. Certain Professional Services Excluded**

Neither this Proposal Invitation nor any Contract includes services that are required to be procured under the Professional Services Procurement Act (Chapter 2254 of the Texas Government Code), including without limitation architecture and professional engineering services.

**11. Withdrawal or Modification of Proposal**

Vendor may withdraw a submitted Proposal **prior to the Proposal Due Date and time** specified in this Proposal Invitation. A Proposal may be withdrawn only in strict accordance with this section.

**Withdrawal of Proposals:** Vendor must submit a written request to the Cooperative for authorization to withdraw a Proposal. The request, which must apply to the submitted Proposal in its entirety, must be signed by an individual duly authorized to enter into contracts on Proposer's behalf, and indicate the individual's title. The Proposal may not be withdrawn after the Proposal Due Date and time and will not be considered for withdrawal if not submitted in accordance with the packaging and labeling instructions applicable to Proposal submissions.

If a Vendor submitted a Proposal in hard copy electronic format via mail or in person, rather than electronic submission through the designated website, Proposer must submit a written request to the Cooperative Administrator to withdraw the Proposal. The request to withdraw must be signed by an individual authorized to enter into contracts on Vendor's behalf and indicate the individual's title. If the Cooperative Administrator has any question or doubt regarding Vendor's identity or the identity of its Proposal, withdrawal will not be allowed. If the Cooperative Administrator, decides to allow the withdrawal, Vendor's duly authorized representative may be required to complete and sign a written receipt satisfactory to the Cooperative Administrator before the proposal will be released. The decision of the Cooperative Administrator relating to matters concerning withdrawal of a Proposal is final.

A Vendor may resubmit a withdrawn Proposal, or submit a new Proposal, up until the Proposal Due Date and time, provided any new submission meets the requirements of this Proposal Invitation. If Vendor resubmits a Proposal that was withdrawn and makes any change to any document in the Proposal package, the change must be made in accordance with the Cooperative's instructions for Proposal submissions, and Vendor will be deemed to have authorized such change.

**Proposals that are in the Cooperative's possession at the Proposal Due Date and time shall be deemed final, conclusive, and irrevocable; and no Proposal will be subject to withdrawal, amendment, or correction after the Proposal Due Date and time specified in this Proposal Invitation.** However, pursuant to section B.4 (Deviations from Item Specifications or General Terms and Conditions), the Cooperative reserves the right, in its sole discretion, to seek clarification, communicate and resolve issues around deviations that were submitted in a Proposal, consistent with general procurement principles of fair competition.

## **12. Certifications**

The Proposer's Acceptance and Agreement and Proposal Acknowledgement forms, which are fundamental to and incorporated into this Proposal Invitation, require Vendor to certify to certain matters. Pursuant to and in accordance with such forms, and in addition to the matters set forth therein, Vendor certifies to the following with respect to this Proposal Invitation, the Proposal, and any Contract awarded under this Proposal Invitation.

### **(a) Non-Collusion Certification**

Vendor agrees and certifies to the following, and understands that the penalty for violating this non-collusion certification will be the immediate disqualification of Vendor's Proposal or, if the violation is revealed after Contract award, any remedies allowed by law or the Contract including termination of Vendor's Contract:

- 1) Neither Vendor nor any business entity represented by Vendor has received compensation for participation in the preparation of the item specifications or these Terms and Conditions related to this Proposal Invitation;
- 2) The Proposal has been arrived at independently and is submitted without collusion with any other Vendor, with any competitor or potential competitor, or with any other person or entity to obtain any information or gain any special treatment or favoritism that would in any way limit competition or give any proposer an unfair advantage over any other Proposer with respect to the Proposal;
- 3) Vendor has not accepted, offered, conferred, or agreed to confer, and will not in the future accept, offer, confer, or agree to confer, any benefit or anything of value to any person or entity related to the Cooperative or any of its members in connection with any information or submission related to the Proposal, any recommendation, decision, vote, or award related to the Proposal, or the exercise of any influence or discretion concerning the sale, delivery, or performance of any product or service related to the Proposal;

- 4) Neither Vendor, nor any business entity represented by Vendor, nor anyone acting for such business entity, has violated the Federal Antitrust Laws or the antitrust laws of this State with regard to the Proposal, and the Proposal has not been knowingly disclosed, and will not be knowingly disclosed, to any other Proposer, competitor, or potential competitor prior to the opening of Proposals;
- 5) No attempt has been or will be made to induce any other person or entity to submit or to not submit a Proposal.

**(b) Certification Regarding Legal, Ethical, and Other Matters**

Vendor agrees and certifies to the following:

- 1) Vendor has, or has the ability to obtain, such financial and other resources, including inventories, as may be required to fulfill all the responsibilities associated with the Proposal;
- 2) Vendor has a high degree of integrity and business ethics, and a satisfactory record of performance;
- 3) Vendor is an authorized dealer, distributor, or manufacturer for the products or services offered in the Proposal for each region or state Vendor proposes to serve in the Proposal;
- 4) Vendor has not been notified by any local, state, or federal agency with competent jurisdiction that its standing in any matters whatsoever would preclude it from submitting its Proposal and Vendor would in no other way whatsoever be disqualified to propose or receive any award or Contract related to this Proposal Invitation, and Vendor will comply with any reasonable request from the Cooperative to supply information sufficient to substantiate the foregoing representations;
- 5) Vendor has provided its valid, proper and correct business entity name and information in its Proposal, that such entity is operating in good standing with the proper authority from whatever state or local jurisdiction is required, and Vendor has obtained, and will continue to maintain during the entire term of the Contract, all permits, approvals, or licenses necessary for lawful performance of its obligations under this Contract;
- 6) The prices, prompt payment discount terms, delivery terms, distribution allowances and the quality and/or performance (including warranties) of the product or services offered in the Proposal are and will remain the same or better than those offered Vendor's similarly situated customers under similar circumstances, including those offered through other purchasing cooperatives;
- 7) All pricing offered in the Proposal is and will remain fair and reasonable considering general market pricing for similar goods or services. Vendor has not and will not seek to engage in price gouging or price manipulation;
- 8) The Proposal complies with all federal, state, and local laws concerning these types of products or services, and Vendor will continue to comply with any applicable federal, state, and local laws related to Vendor's activities in connection with the Contract;
- 9) Vendor will comply with any applicable prevailing wage rate requirements under the federal Davis-Bacon or state or local law, including Chapter 2258 of the Texas Government Code;
- 10) Vendor will maintain, at Vendor's expense, any insurance, including without limitation such workers' compensation insurance as may be required by state or local law or policy, necessary to protect the Cooperative and its members from all claims for bodily injury, death, or property damage that might arise from the performance by Vendor or its employees or its agents of any service under the Contract; however, the existence of such insurance does not relieve Vendor of full responsibility and liability for damages, injury, death, or loss as described or as otherwise provided for by law; and
- 11) Any false statement contained in the Proposal is a material breach of contract which will void the Proposal or any resulting Contract, and subject Vendor to removal from all proposal lists, and possible criminal prosecution.

**13. Proposal Signatures**

Vendor must submit its Proposal in strict accordance with the Cooperative’s instructions, including having an officer duly authorized by Vendor execute the Proposal. By signing, the signatory warrants that he or she has read and agrees to the terms of the Proposal and is authorized to execute the same as a legally binding act of Proposer. A facsimile or electronic signature will be deemed an original.

**14. No Reimbursement**

**Vendor understands and acknowledges the Cooperative will not reimburse or pay Vendor for any expenses Vendor incurs in preparing its Proposal or providing additional information required in connection with the Proposal.**

**C. Proposal Evaluation**

**1. General**

A Proposal submitted in accordance with this Proposal Invitation will initially be considered for award; however, initial consideration of a Proposal will not constitute an assessment of its meeting the necessary qualifications, and a Proposal may be disqualified at any time during the evaluation process for failure to meet any other terms or conditions contained anywhere else in this Proposal Invitation.

**2. Best Value Criteria**

The Cooperative evaluates Proposals on the basis of best value to Cooperative members. In evaluating Proposals and determining best value for all Cooperative members, the Cooperative will consider the following criteria:

Best Value Criteria		Maximum Points
1	Price Competitiveness	45
2	Vendor Past Performance	15
3	Vendor Reputation for Goods and Services	15
4	Financial and Technical Resources	15
5	Capability of Servicing Cooperative Members	5
6	Any other relevant factor or requirement listed in this Proposal Invitation	5
<b>TOTAL</b>		<b>100</b>

The Cooperative’s evaluation may include Vendor’s responses to the forms and other attachments or information included with a Proposal or associated with this Proposal Invitation, including but not limited to Vendor’s responses to the Proposal Invitation Questionnaire, as well as any other information at its disposal deemed relevant by the Cooperative in its sole discretion. Only responsive Proposals will be evaluated. Failure to include all required information may result in a Proposal being deemed non-responsive.

As a general matter, the Cooperative seeks to make competitive and indefinite quantity awards to Proposers that give the same or better discounts/pricing than they give their best governmental clients and can provide best value to Cooperative members. Proposers should provide competitive pricing that is the same or better than the pricing provided their best governmental clients. Each Proposal is evaluated on its own merit and determined to be fair and reasonable, including by comparing the price/discounts that Vendor offers other governmental clients.

The Cooperative may award Contracts to multiple Proposers supplying comparable products or services, also known as a multiple award schedule, or award the Contract to a single Proposer. The Cooperative’s decision to make multiple awards or a single award will be based upon the Cooperative’s sole discretion regarding the type of award that provides best value to all Cooperative members.

In regard to Vendor past performance, among other factors, the Cooperative may consider a Vendor's breach of contractual obligation on any other active or prior Cooperative contract awarded to Vendor including, but not limited to, nonpayment of service fees by Vendor, its parent company or affiliates and/or Vendor's failure to generate any minimum amount specified in a prior-awarded Cooperative contract.

The Proposal Invitation may also require Proposers to provide certain information in the Proposal Forms for which the Cooperative does not evaluate the Proposer's responses as part of the award criteria set out in this Section C.2. The Cooperative requests such information because it may be relevant to federal, state or local procurement law or other requirements that apply to various Cooperative members. (Cooperative members may also require and request Vendors provide additional certifications and information to meet the Cooperative member's specific procurement requirements prior to making purchases under an awarded Contract.) This information, which will be made available to Cooperative members with respect to awarded Vendors, includes the following:

- (a) Resident/Nonresident Certification;
- (b) Vendor Employment Certification;
- (c) Historically Underutilized Business Certification; and
- (d) EDGAR Vendor Certification.

### **3. Cooperative Board Decision**

The Cooperative reserves the right to waive any or all irregularities, formalities, or other technicalities and to be the sole and independent judge of quality and suitability of any products or services offered. The Cooperative may accept or reject a Proposal in its entirety or may reject any part of a Proposal without affecting the remainder of that Proposal and may award individual items in this Proposal Invitation in any combination or in any way that provides best value to Cooperative members based on the criteria set out in section C.2 (Best Value Criteria) of these Terms and Conditions. The Cooperative may use all means and information at the collective disposal of the Cooperative, Cooperative Administrator, and Cooperative members to evaluate Proposals. The final decision as to the best overall offer(s), including as to pricing and suitability of the proposed products or services to meet the needs of and provide best value to Cooperative members, rests solely with the Cooperative's Board of Trustees.

## **D. Contract Award**

### **1. Notice of Award and Related Matters**

A Proposal is an offer by Vendor to contract with the Cooperative and Cooperative members in accordance with this Proposal Invitation, including without limitation the item specifications, and these Terms and Conditions. A Proposal does not become a Contract unless and until the Proposal is accepted by the Cooperative through the issuance of a written Notice of Award to the successful Proposer, whereupon the Contract becomes binding and enforceable. The Contract is then utilized by a Cooperative member by the member issuing a Purchase Order for the awarded products or services. Vendor must honor all Purchase Orders issued by Cooperative members during the Contract term in accordance with these Terms and Conditions. The Cooperative may maintain Vendor's contract documents in electronic format for the duration of the Contract term.

As provided for in detail in Section E.10(a) (Purchase Reporting), Vendor must submit to the Cooperative Administrator reports of Purchase Orders and Vendor Invoices for all deliveries made to Cooperative members under the Contract during a calendar month, no later than the 10<sup>th</sup> day of the following month.

## **2. Applicable Terms and Conditions; Ancillary Agreements**

By submitting a Proposal, Vendor specifically agrees that these Terms and Conditions shall apply, subject to any deviations properly submitted by Proposer and approved by the Cooperative in accordance with section B.4 (Deviations from Item Specifications or General Terms and Conditions). Following award, Vendor shall not seek to impose on a Cooperative member additional terms, conditions, or ancillary agreements that are inconsistent with, or intended to supersede, the Contract Terms and Conditions. Further, Cooperative members and Vendors do not have the authority to modify these Terms and Conditions. However, nothing herein shall prevent the Cooperative member and Vendor from negotiating additional ancillary terms applicable to a specific purchase or purchases, consistent with the requirements of these Terms and Conditions, including but not limited to:

- (a) Detailed product or service requirements for the specific Cooperative member purchase;
- (b) Product delivery times and requirements for the specific Cooperative member purchase;
- (c) Performance and/or payment bonds from Vendor as may be required by law or policy or deemed necessary or appropriate by the Cooperative member;
- (d) Requirements for Vendor to carry and provide proof of insurance as may be required by law or policy or as deemed necessary or appropriate by the Cooperative member;
- (e) Requirements for background checks at Vendor's expense on Vendor employees who will have direct contact with students or staff, or for other reasons;
- (f) Other requirements applicable to the purchase as may be required by law, local policy, or deemed necessary or appropriate by the Cooperative member.

Any ancillary terms between a Cooperative member and Vendor must be in writing and signed by a representative of the Cooperative member with all necessary authority to accept the agreement and bind the Cooperative member. All risk of confirming proper authority shall lie with Vendor.

By submitting a Proposal, Vendor understands and acknowledges that Cooperative members are governmental entities, and any provision in any ancillary agreement which requires the Cooperative member to indemnify or hold harmless Vendor, or any other provision not allowed by the laws applicable to the purchasing Cooperative member, shall be void and of no effect. Vendor further acknowledges and agrees that, notwithstanding anything in any ancillary agreement, including a product warranty, to the contrary, the laws applicable to such agreement shall be the laws of the state in which the Cooperative member is located. This provision supersedes any provision in any ancillary agreement to the contrary.

Any attempt by Vendor to deviate from this section and supersede these Terms and Conditions with Vendor's own agreement form, standard agreement, or terms and conditions shall be deemed rejected. Further, any attempt by an awarded Vendor to impose terms and conditions on a Cooperative member that are inconsistent with the requirements of this section shall be an event of default under the Contract and subject to all remedies up to and including termination of Vendor's Contract.

**Nothing in any ancillary agreement between a Cooperative member and Vendor shall affect the Terms and Conditions of the Contract as between the Cooperative and Vendor.**

## **3. Piggyback Contract and Other Entity Clause**

It is the Cooperative's intent that other governmental entities throughout the United States have the opportunity to purchase the goods or services awarded under the Contract at the same pricing and according to these Terms and Conditions, subject to applicable state law, through a piggy-back award or similar agreement. To the extent applicable, Vendor must offer and sell the awarded goods and services to such organizations and entities in accordance with Vendor's Proposal, including the State Service Designation Form and the National Purchasing Cooperative Vendor Award Agreement.

## E. Contract Performance

### 1. Contract Term

**(a) Term.** The term of the Contract is for the initial term stated in this Proposal Invitation, which term begins on the date specified in the Notice of Award. Unless otherwise stated in this Proposal Invitation, the Contract may be renewed annually for up to four additional one-year terms as provided for in this section E.1. In the event the Contract term will expire before the Cooperative awards a successor contract for the categories of awarded products or services, the Contract may be extended beyond the expiration date on a month-to-month basis, or such other term as determined by the Cooperative and Vendor, provided that the Awarded Pricing does not increase during such extension. A reference to "Contract term" in these Terms and Conditions means the initial term and any renewal term.

**(b) Survival.** The Contract shall govern the Vendor's and the Cooperative member's rights and obligations with respect to any Purchase Order issued during the Contract term and afterwards with respect to any Purchase Order or purchase bound by the Cooperative member for specified products **before** the Contract award period ended. This includes, but is not limited to, the Vendor's obligations to pay to the Cooperative all applicable service fees as required by section E.10(b) (Service Fees) of these Terms and Conditions for such Purchase Orders.

**(c) Renewals.** Vendor has no right to or vested interest in a Contract renewal. The Cooperative will evaluate the Contract award prior to the expiration of the then current Contract term (initial or renewal) and reserves the right to not renew the Contract based on factors that may include, but are not limited to, the annual amount of business, Vendor's performance (including, but not limited to, compliance with the Terms and Conditions), and the continued provision of best value to Cooperative members. With respect to annual amount of business, Vendor must generate the minimum amount specified in the General Information document associated with this Proposal Invitation through the Contract, during both the initial and the first renewal term, or may not be offered a second renewal term. A Vendor's failure to generate this minimum amount may also be considered by the Cooperative as part of Vendor's past performance evaluation on future proposal invitations. A renewal must be agreed to by the Cooperative and Vendor. Vendor must promptly, and before the start of the renewal term, notify the Cooperative in writing if Vendor does not accept a renewal offered by the Cooperative or Vendor will have been deemed to have accepted the renewal.

### 2. Prevailing Wages, Bonding and Insurance Requirements

Vendor must comply with any applicable prevailing wage rate requirements under the federal Davis-Bacon or state or local law, including Chapter 2258 of the Texas Government Code. Vendor must provide any applicable performance and payment bonds as required by law, including Chapter 2253 of the Texas Government Code, or as requested by a Cooperative member. Vendor must maintain appropriate and sufficient insurance, including without limitation such workers' compensation insurance as may be required by state or local law or policy, necessary to protect Vendor and the Cooperative and its members from all claims for bodily injury, death, or property damage that might arise from the performance by Vendor or its employees or agents of any service under the Contract; however, the existence of such insurance does not relieve Vendor of full responsibility and liability for damages, injury, death, or loss as described or as otherwise provided by law.

### 3. Awarded Items Only May Be Sold; Conformity to Item Specifications

If awarded a Contract, Vendor may only offer under the Contract those products and services included in Vendor's Proposal and awarded to Vendor by the Cooperative ("Awarded Items"). For awards based on catalogs or pricelists, Awarded Items shall include only those items within the specification category or categories awarded to Vendor that were included in the catalog(s) or pricelist(s) submitted with Vendor's Proposal or as updated when and if permitted by section E.8 (Product Updates and Substitutions). Any attempt by Vendor to sell items other than Awarded Items under the Contract shall be an event of default under the Contract.

Vendor warrants that the Awarded Items Vendor provides under the Contract will conform to the item specifications and other requirements of this Proposal Invitation (except to the extent and as specifically noted as deviations in Vendor's Proposal), and will be free from all defects in material, workmanship and title. Vendor further warrants that (i) Vendor has obtained, and will continue to maintain during the entire term of the Contract, all permits, approvals, and/or licenses necessary for lawful performance of Vendor's obligations under the Contract; (ii) Vendor will comply with all applicable state, federal and local laws, rules, and regulations in regard to Awarded Items, and (iii) all Awarded Items provided under the Contract meet all applicable legal standards and requirements, including OSHA standards and regulations, and that any electrical items bear the appropriate listing from US, FMRC, NEMA, or UL Laboratories.

If Vendor provides a product that does not conform to an item specification, including delivering a product other than the specific brand and model of the product awarded, the ordering Cooperative member may reject the product when delivered and terminate the Purchase Order, at no cost or penalty to the member.

If Awarded Items include chemicals or other products that customarily require Material Safety Data Sheets (MSDS), Vendor must include the MSDS with the first shipment of the product to a Cooperative member during the Contract term. Vendor must provide additional MSDSs to Cooperative members upon request, promptly and at no additional cost.

#### **4. Awarded Pricing**

Awarded pricing shall be based on the pricing structure as set forth in the Proposal Invitation, submitted in Vendor's Proposal, and approved by the Cooperative ("Awarded Pricing"). Except as provided in this section E.4 or otherwise in this Proposal Invitation, Vendor shall hold its awarded pricing firm during the Contract term.

If it is determined that a Vendor has sold Awarded Items to Cooperative members through the Contract at a price higher than the applicable Awarded Pricing, Vendor shall be in default of its Contract and subject to all remedies up to and including termination.

In the event Vendor decreases the price of awarded products or services for any or all of its other customers in similar market circumstances below the Contract price, Vendor must offer such decreased pricing to Cooperative members.

During the Contract term, Cooperative members may negotiate with Vendor to obtain lower prices for Awarded Items based on volume or other factors.

Unless specified otherwise in this Proposal Invitation, the Service Fee due pursuant to section E.10(b) (Service Fee) of these Terms and Conditions is included in the Awarded Pricing.

#### **5. Packaging, Transportation and Delivery**

Unless otherwise provided for in this Proposal Invitation, all products must be transported and delivered in containers and trucks appropriately designed for the product, with all reasonable safety precautions taken, including but not limited to full compliance with all applicable laws for the transport, delivery, and storage of the applicable product(s). Vendor is responsible for paying all freight, delivery, handling and other charges incurred in transporting and delivering products to a Cooperative member, and for the risk of loss until the product is delivered to and accepted by the Cooperative member. Freight, delivery, handling and other charges incurred in transporting and delivering products to a Cooperative member are to be prepaid by Vendor. Vendor may collect the actual amount of such charges after delivery and acceptance, provided that the charges (a) were disclosed to the Cooperative member, if requested, and in all instances in which the charges exceed ten percent (10%) of the total cost of the order, prior to shipment; (b) are itemized and shown separately on the member's invoice; and (c) are supported by appropriate documentation submitted with the invoice.

Except for items that have hidden defects or that do not meet specifications, title and risk of loss to products pass to a Cooperative member upon the member's actual receipt and acceptance of the product at the point and time of delivery. Unless otherwise noted in the Proposal (as a deviation) or the Purchase Order, Vendor must deliver or provide awarded products or services within 48 hours after receipt of a Cooperative member's Purchase Order. Vendor must immediately notify the Cooperative member's primary contact of any anticipated or actual delay and document the notice in writing, and the member may extend the delivery time or cancel the order if the delay is unacceptable. If the Cooperative member has not received notice of the delay as required by this section, the member may, at its discretion, return to Vendor any items received after the due date, at Vendor's expense and without liability or penalty to the member. Additionally, a Cooperative member may request emergency delivery, and Vendor must use its best efforts to comply with rush or emergency requests. If Vendor cannot fulfill the emergency delivery requirement, the member may procure the products or services from alternative sources without penalty. Time is of the essence in Vendor's performance of the Contract.

## **6. Packing Lists, Invoices and Payments**

### **(a) Packing Lists, Vendor Invoices**

Packing lists or other suitable shipping documents must accompany each shipment and state: (a) Vendor's name and address; (b) Cooperative member's name and address or delivery location; (c) Cooperative member's Purchase Order number; (d) descriptive information identifying the item(s) delivered, including quantity, item description, and total number of containers; and (e) copies of all product warranties for the item(s) delivered. Vendor must submit separate invoices, in duplicate, on each Purchase Order after each delivery. Invoices must (a) contain the information stated above; (b) separately itemize any transportation and delivery charges and include associated documentation; (c) include a properly signed copy of the delivery receipt; and (d) be mailed directly to the ordering Cooperative member. Unless specified otherwise in this Proposal Invitation, the Service Fee due pursuant to section E.10(b) (Service Fee) of these Terms and Conditions is included in the Awarded Pricing and shall not be separately itemized in the invoice.

Vendor shall provide reports of Purchase Orders and Vendor Invoices in accordance with section E.10(a) (Purchase Reporting).

### **(b) Payments**

Payment by the Cooperative member is due after a Cooperative member's receipt and acceptance of ordered products and the documentation identified above, including a complete and correct invoice, in accordance with the Prompt Payment Act (Chapter 2251 of the Texas Government Code.) A Cooperative member is not responsible for products delivered or invoiced without a valid purchase order number.

**A Cooperative member's obligation to Vendor is payable only and solely from funds available for the purpose of the purchase. Lack of funds will render a member's Purchase Order null and void to the extent funds are not available and any delivered but unpaid product will be returned to Vendor. Neither the Cooperative nor the Cooperative Administrator, TASB, is liable or responsible for any payment owed Vendor by a Cooperative member under the Contract.**

## **7. Product Inspection, Testing, and Defective Items**

Products supplied under the Contract must be delivered in the best possible condition, be covered by the product warranties provided by Vendor and/or the product manufacturer to other customers, and are subject to inspection, testing, and approval by the Cooperative or a Cooperative member. Tests may be performed on samples taken from any regular shipment of the product. In the event a tested product fails to meet or exceed all requirements of the item specifications or these Terms and Conditions, Vendor must pay the cost of the samples and the testing.

Upon receipt of notification from the Cooperative or Cooperative member, Vendor must pick up and replace the defective product within five business days or on the next service date, whichever is sooner, without charge for the replacement or delivery. Additionally, the Cooperative or Cooperative member may dispose of defective products that are not picked up and replaced by Vendor, without cost. Products damaged in shipment are considered defective for purposes of the foregoing. Latent defects discovered after delivery and acceptance of any products may result in revocation of the acceptance of such products. The Cooperative or Cooperative member must have access to Vendor's place of business during normal business hours for the purpose of inspecting any awarded product.

### **8. Product Guarantees and Warranties**

Vendor shall extend such warranties on Awarded Items as are normally provided to other customers of Vendor. Unless a deviation is submitted by Vendor with its Proposal and accepted by the Cooperative pursuant to section B.4 (Deviations from Item Specifications or General Terms and Conditions) or unless a different warranty is required by a Cooperative member Purchase Order or ancillary agreement, a minimum of a 90-day product guarantee or the manufacturer's standard commercial warranty, whichever is greater, will apply to all awarded products. At a minimum, all product warranties must provide for replacement of defective items and include pick-up of the defective items from the location specified by the Cooperative member and delivery of the replacement(s) to the same location. The warranty period is effective from the date the Cooperative member accepts the product. No waiver of implied warranties shall be effective unless explicitly approved by a Cooperative member in writing in accordance with Section D.2 (Applicable Terms and Conditions; Ancillary Agreements).

Vendor shall respond to any reasonable requests for information from the Cooperative, the Cooperative Administrator, or a Cooperative member pertaining to concerns regarding public health or safety in relation to Awarded Items and provide such documentation as may be reasonably requested. In the event of any product recalls affecting Awarded Items, Vendor shall notify the Cooperative Administrator and any Cooperative members who made purchases from Vendor for such recalled products in writing as soon as practicable of the recall and proposed action. At a minimum and without waiving any other requirements under the Contract, law, or Cooperative member Purchase Order or ancillary agreement, Vendor shall be required to take all action required by law or greater remedy as may be offered by Vendor to other customers with respect to recalled products, including but not limited to, prompt replacement and/or refunds.

### **9. Multiple Distribution Centers and Single Point of Contact**

The Cooperative and Cooperative members will have **one Vendor contact person** for overall contract management relative to the Contract, even if Vendor uses multiple distribution centers or designated dealers, and the Cooperative and its members will not be required to deal with multiple Vendor contacts for overall contract management.

### **10. Reporting of Cooperative Member Purchases; Service Fees**

#### **(a) Purchase Reporting**

A Cooperative member may make purchases from Vendor under the Contract by issuing a Purchase Order to procure Awarded Items. Vendor shall provide monthly reports to the Cooperative Administrator of all Purchase Orders and Vendor Invoices for Cooperative member purchases under the Contract. Vendor shall submit reports of Purchase Orders and Vendor Invoices to [energy@tasb.org](mailto:energy@tasb.org) no later than the 10<sup>th</sup> day of the month. The report shall contain a list of all Purchase Orders received by Vendor during the preceding month from Cooperative members for purchases under the Contract and a list of all invoices billed by Vendor to Cooperative members during the preceding month for purchases under the Contract.

Monthly reports shall include any and all information reasonably required by and be in such format as may reasonably be required by the Cooperative Administrator. At a minimum, reports shall include the Cooperative member name, Purchase Order number, general description of the purchase (e.g. Fuel type and number of gallons), and invoice amount.

Vendor agrees to cooperate with the Cooperative to promptly provide such reasonable information and documentation as the Cooperative Administrator may require regarding Purchase Orders received by Vendor and Vendor Invoices issued by Vendor under the Contract including, but not limited to, providing full copies of Purchase Orders and Vendor Invoices upon request.

**(b) Service Fee**

An awarded Vendor under this Proposal Invitation must pay the Cooperative a service fee ("Cooperative Service Fee" or "Service Fee") in the amount set forth below for Fuel sold under the Contract, and the Service Fee is **included** in the awarded pricing.

- Service Fee for **Rack Rate Unleaded Gasoline and Diesel Fuel**: One-half cent (\$0.005) per gallon
- Service Fee for **Unleaded Gasoline and Diesel Fuel – Oil Price Information Service (OPIS)**: One cent (\$0.01) per gallon

The Cooperative reserves the right, in its sole discretion, to reduce the Service Fee for any fuel type at any time. In the event the Cooperative reduces the Service Fee for a particular Fuel or Fuels, and the price quoted by Vendor included a Service Fee amount greater than the amount ultimately charged by the Cooperative, the Vendor shall reduce the Fuel price by the amount of the decrease in the Service Fee.

Vendor must remit Service Fees to the Cooperative by delivery to the Cooperative Administrator in Austin, Texas, no later than the 30<sup>th</sup> day of the month following the calendar month of delivery of the Fuel to the ordering Cooperative member. The Cooperative has the right, upon reasonable written notice, to review Vendor's records pertaining to purchases under the Contract with Cooperative members to verify purchase history and the accuracy of service fees payable from Vendor.

Service Fees shall be deemed incurred on the date of Vendor's receipt of payment for products by the Cooperative member.

**11. Disclaimer of Warranty and Limitation of Liability**

THE COOPERATIVE AND COOPERATIVE ADMINISTRATOR, TASB, DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO THE AVAILABILITY, ACCURACY, CONTENT OR ANY OTHER ASPECT OF ANY INFORMATION, PRODUCT, OR SERVICE FURNISHED UNDER THE CONTRACT AWARD, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITH RESPECT TO ANY AND ALL CAUSES OF ACTION ARISING UNDER OR RELATED TO THE CONTRACT, NEITHER THE COOPERATIVE NOR TASB, NOR THEIR RESPECTIVE OFFICERS, BOARD MEMBERS, EMPLOYEES OR AGENTS, IS LIABLE TO VENDOR UNDER ANY CIRCUMSTANCES FOR LOST REVENUE, DATA OR PROFITS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, EVEN IF THE COOPERATIVE AND/OR TASB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY PROVIDED BY LAW, IN NO EVENT WILL THE COOPERATIVE AND/OR TASB'S TOTAL JOINT LIABILITY TO VENDOR EXCEED THE AMOUNT OF THE SERVICE FEE PAID BY VENDOR DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

**Neither the Cooperative nor Cooperative Administrator, TASB, is in any way liable to Vendor for a Cooperative member's performance or nonperformance of the member's obligations under the Contract or Purchase Order.**

**12. Sales Tax**

Cooperative members are governmental entities which are generally exempt by law from the payment of state sales tax and federal excise tax. Vendor may request a Cooperative member to provide a tax exemption certificate, or the member may establish its tax exempt status by including tax exemption information with the Purchase Order as authorized under law. Vendor is responsible for collecting such taxes, if any, as may be due from a Cooperative member and remitting payment to the appropriate taxing authority.

**13. Indemnification**

Vendor agrees to defend, indemnify, and hold harmless the Cooperative, TASB, and Cooperative members, and their officers, board members, agents and employees, from and against all third-party claims, actions, suits, liability, liens, loss and damage of any character, type, or description, including without limitation all expenses of litigation, court costs and attorney's fees, arising out of or related to (a) injury or death to any person or damage to any property related to the acts of Vendor or its agents, subcontractors, or employees in the execution of or performance under the Contract or a Purchase Order, as applicable; and (b) Vendor's negligence, misconduct, breach of contract or other failure to comply with its obligations in the execution or performance under the Contract or a Purchase Order, as applicable.

**14. Intellectual Property Infringement**

Without limiting the scope of section E.13 (Indemnification), if any claim is asserted, or action or proceeding brought against the Cooperative, the Cooperative Administrator, or a Cooperative member that alleges that either (1) all or any part of the products or services supplied by Vendor, in the form supplied or modified by Vendor, or its subcontractors pursuant to Vendor's sole directions, or (2) any information provided by Vendor or its agents to a Cooperative member, the Cooperative, or the Cooperative Administrator infringes or misappropriates any United States intellectual property, intangible asset, or other proprietary right, title or interest (including, without limitation, any copyright or patent or any trade secret right, title, or interest), or violates any other contract, license, grant, or other proprietary right of any third party, the Cooperative, Cooperative Administrator, or Cooperative member upon its awareness, shall give Vendor prompt written notice thereof. Vendor shall defend, and hold the Cooperative, the Cooperative Administrator, and the Cooperative member harmless against any such claim or action and shall indemnify the Cooperative, the Cooperative Administrator, and Cooperative member against any liability, damages and costs resulting from such claim. In addition, if, in any such suit arising from such claim, the continued use of the product for the purpose intended is enjoined by any court of competent jurisdiction, unless otherwise agreed in writing by the Cooperative member, Vendor shall, at its expense and option, either (a) procure for the Cooperative member the right to continue using the product; (b) modify the product so that it becomes non-infringing; (c) replace the product or portions thereof so that it becomes non-infringing; or (d) allow the Cooperative member to return the product or cancel the service and refund the purchase price (less reasonable depreciation for use, if applicable.)

**15. Remedies for Default and Termination of Contract****(a) Default and Termination of Cooperative Contract**

Except as otherwise provided for in these Terms and Conditions, either party (Cooperative or Vendor) may terminate the Contract in whole or in part in the event of the other party's substantial failure to fulfill its obligations under the Contract through no fault of the terminating party; provided, however, that the defaulting party is given at least 10 business days prior written notice of the default and intent to terminate (delivered by certified mail, return receipt requested, or other method that similarly documents receipt), and, to the extent the default is capable of being cured, a 10 business day opportunity to remedy the default to the satisfaction of the terminating party.

At the Cooperative's option and in addition to any other remedies it may have available, the Cooperative may terminate the Contract if Vendor fails to adhere to or violates any of the provisions of these Terms and Conditions, including the certifications. Without limiting the scope of the foregoing, one or more of the following constitute grounds for termination:

- 1) Materially misleading or false statement(s) in Vendor's Proposal;
- 2) Delivery of product or services that fail to meet the item specifications;
- 3) Delivery of product or services that are defective or substandard or fail to pass product inspection;
- 4) Failure to meet required delivery schedules;
- 5) Failure to timely supply Awarded Items at the Awarded Pricing;
- 6) Failure to timely remit any Service Fee due the Cooperative under the Contract or any other contract with Vendor, its parent company, or affiliates;
- 7) Failure to provide, within a reasonable time and where required by the Contract, information reasonably requested by the Cooperative or Cooperative Administrator including, but not limited to, information requested under section E.10 (Reporting of Cooperative Member Purchases; Service Fees) of these Terms and Conditions;
- 8) Providing architectural or engineering services under the Contract that must be procured pursuant to the Professional Services Procurement Act (Chapter 2254 of the Texas Government Code);
- 9) Selling non-awarded products or services under the Contract or any other Cooperative contract; or
- 10) Vendor refusal, inability, or loss of ability to offer or provide Awarded Items to Cooperative members in awarded regions or states unless caused by a Force Majeure event pursuant and subject to section E.16 (Force Majeure).

Notwithstanding any other provision of this section E.15, in the event of Vendor's default under or breach of any provision in the Contract, the Cooperative reserves the right to enforce the performance of the Contract in any manner prescribed by law or deemed to be in the best interest of the Cooperative or necessary or appropriate to protect or provide best value to Cooperative members. Without limiting the scope of the foregoing, the Cooperative, acting by or through the Cooperative Administrator, may temporarily inactivate (suspend) Vendor's Contract or require removal of an Awarded Item with or without prior notice to Vendor, if the Cooperative or Cooperative Administrator reasonably determines that that there has been a breach under the Contract or any other Cooperative contract with Vendor, including but not limited to nonpayment of service fees, or that there is a potential policy, public health, or safety issue to warrant such action.

The temporary inactivation may remain in effect pending further action or termination of the Contract by the Cooperative. Vendor remains liable for all obligations and responsibilities incurred prior to and during any temporary inactivation and prior to termination, as applicable.

In the event the Cooperative terminates the Contract, in whole or in part, the Cooperative reserves the right to award the terminated Contract, or any portion thereof, to the next Proposer the Cooperative determines to provide best value to Cooperative members. Additionally, the Cooperative may sue for breach of contract and specific performance and, in addition to contract damages, recover attorneys' fees and costs. Vendor shall be liable for any and all damages permitted by law, and any deviation submitted by Vendor in its Proposal seeking to limit Vendor's liability to the Cooperative shall be deemed rejected.

The Cooperative will not be liable to Vendor for any damages (including, but not limited to, loss of profits or loss of business, or any special, consequential, exemplary, or incidental damages) resulting from termination based on Vendor's default or breach of contract. If any delay or failure of performance is caused by a Force Majeure event as described in section E.16 (Force Majeure) of these Terms and Conditions, the Cooperative may, in its sole discretion, terminate the Contract in whole or part, provided such termination complies with the procedures set out above. Any Contract termination resulting from any cause other than a Force Majeure event will be deemed a valid reason for the Cooperative not considering any future proposals from the defaulting Vendor.

In the event a Vendor's Contract is terminated under this section E.15, Vendor shall remain responsible for payment of all Service Fees to the Cooperative for Awarded Items sold under the Contract to Cooperative members prior to such termination.

**(b) Default and Termination of Cooperative Member Purchase**

A Cooperative member has no authority to terminate the Contract at the Cooperative level for default. A Cooperative member may terminate a Purchase Order or refuse to accept delivery (1) as provided for in these Terms and Conditions, Cooperative member Purchase Order, or ancillary agreement, or (2) for Vendor's material breach of a term or condition included in the Contract, a Cooperative member Purchase Order, or ancillary agreement. Additionally, to the extent permitted by law, Cooperative members may sue for breach of contract and specific performance and, in addition to contract damages, recover attorneys' fees and costs. Nothing herein shall limit the remedies available to a Cooperative member under applicable law.

A Cooperative member will not be liable to Vendor for any damages (including, but not limited to, loss of profits or loss of business, or any special, consequential, exemplary, or incidental damages) resulting from termination based on Vendor's default or breach of contract.

**16. Force Majeure**

The term Force Majeure includes, but is not limited to, governmental restraints or decrees, provided they affect all companies in Vendor's industry equally and are not actions taken solely against Vendor; acts of God (except natural phenomena, such as rain, wind, or flood, which are normally expected in the locale in which performance is to take place); work stoppages due to labor disputes or strikes; fires; explosions; epidemics or pandemics; riots; war; rebellion; or sabotage.

The Cooperative, Cooperative members, and Vendor are required to use due caution and preventive measures to protect against the effects of Force Majeure, and the burden of proving that Force Majeure has occurred rests on the party seeking relief under this section E.16. The claiming party must promptly notify the other party in writing, citing the details of the Force Majeure event, use due diligence to overcome obstacles to performance created by the Force Majeure event, and resume performance immediately after the obstacles have been removed, provided the Contract has not been terminated in the interim.

Delay or failure of performance of the Contract or a Purchase Order caused solely by a Force Majeure event will be excused for the period of delay caused solely by the Force Majeure event, provided the party claiming the event promptly notifies the other party in writing. Neither party shall have any claim for damages against the other resulting from delays caused solely by Force Majeure. The Cooperative will not be responsible for any cost incurred by Vendor because of a Force Majeure event. A Cooperative member will not be responsible for any cost incurred by Vendor because of the Force Majeure event unless an authorized representative of the Cooperative member has requested, in writing, that Vendor incur such cost in connection with any delay or work stoppage caused by the Force Majeure event.

Notwithstanding any other provision of this section E.16, in the event Vendor's performance of its obligations under the Contract is delayed or stopped by a Force Majeure event, the Cooperative may, at its sole option, terminate the Contract in accordance with section E.15 (Remedies for Default and Termination of Contract) of these Terms and Conditions. This section E.16 does not limit or otherwise modify any of the Cooperative's rights as provided elsewhere in the Contract.

## **F. Miscellaneous**

### **1. Assignment**

Vendor may not sell, assign, transfer, convey or subcontract any responsibility or obligation created by the Contract in regard to the Cooperative without the Cooperative's prior written consent. A Vendor wishing to assign, transfer, or convey all or any portion of an awarded Contract shall submit a written request to the Cooperative, preferably at least 60 days before the projected effective date of the assignment, and promptly provide such information as the Cooperative may require to process and consider the request.

Approval or denial of an assignment request shall be within the sole discretion of the Cooperative, and a vendor not awarded a Contract through the Proposal Invitation process has no right or vested interest to assignment of an awarded Contract. In determining whether to consent, the Cooperative may consider any relevant factors, including whether the party to which the sale, assignment, transfer, conveyance or subcontract is proposed is bound to and will honor all obligations and responsibilities imposed on Vendor under the Contract, including Awarded Pricing, and the best interest of and value to Cooperative members. Vendor's attempted sale, assignment, transfer, conveyance or subcontracting of any part of the Contract except in compliance with this section F.1 is void and ineffective.

### **2. Notices**

Unless otherwise provided for in this Proposal Invitation, any written notice or other communication required by the Contract or by law will be conclusively deemed to have been given and received on the third business day after such written notice has been deposited in the U. S. Mail, properly addressed, and with sufficient postage affixed thereto, provided that actual notice may also be given via electronic mail or in any other manner used in commerce.

If the conclusion of any time period provided for in these Terms and Conditions falls on a weekend or a federal holiday, the conclusion of such time period shall be deemed to be extended until the next business day. Otherwise, references to time periods measured by days shall mean calendar days unless business days are specifically designated.

### **3. Equal Employment Opportunity (EEO) Disclosures**

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the state in which Vendor's primary place of business is located. In accordance with such laws, regulations and executive orders, Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status, disability or genetic information, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies.

### **4. Applicable Law, Venue and Dispute Resolution**

The Contract is governed by and will be construed according to the laws of the State of Texas, including the Uniform Commercial Code (UCC) as adopted in the State of Texas as effective and in force on the date of the Contract. Venue for any litigation concerning the Cooperative or TASB lies in Austin, Travis County, Texas, and venue for any litigation between a Cooperative member and Vendor arising under the Contract lies in the home county of the member. The parties have the mutual affirmative duty to attempt to resolve any disputes that arise under the Contract in good faith at the least possible expense prior to the initiation of any type of judicial or administrative proceeding.

**5. Waiver**

No claim or right arising out of a breach of the Contract can be discharged in whole or part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. A party's failure to require strict performance of any provision of the Contract does not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision.

**6. Interpretation – Parol Evidence**

This writing is intended by the parties as a final expression of their agreement and a complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties and no usage of the trade is relevant to supplement or explain any terms used in the Contract. Acceptance or acquiescence in a course of performance rendered under the Contract is not relevant to and does not determine the meaning of the Contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection.

**7. Right to Assurance**

Whenever the Cooperative in good faith has reason to question Vendor's intent to perform, the Cooperative may demand that Vendor give written assurance of its intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the Cooperative may treat the failure as an anticipatory repudiation of the Contract.

**8. Non-Appropriations Clause**

Texas law prohibits the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. A Cooperative member that is a governmental entity (a) reserves the right to rescind a multi-year purchase order or other agreement to purchase products or services under the Contract at the end of the member's fiscal year if it is determined that funding is not available to extend the agreement; and (b) will use its best efforts to attempt to obtain and appropriate funds for payment.

**9. Invalid Term or Condition.**

If any term or condition of the Contract is held invalid or unenforceable, the remainder of the Contract will not be affected and will be valid and enforceable.

**10. Remedies Cumulative**

The remedies available to the Cooperative, a Cooperative member, or Vendor under this Contract are in addition to any other remedies that may be available under law or in equity.

**11. Signatures**

Except as otherwise specifically required in these Terms and Conditions, all notices, requests, amendments and other written documentation required or authorized under the Contract may be provided electronically or as an imaged document, and an electronic or facsimile signature shall be deemed an original.

**12. Right of Setoff**

Any indebtedness or obligation owed by Vendor or Vendor's affiliates to the Cooperative may be appropriated and applied by the Cooperative at any time, and from time to time, on any indebtedness or other obligation owed by the Cooperative to Vendor or Vendor's affiliates, whether such indebtedness or other obligations are now existing or hereafter arise, and whether under the Contract or otherwise. It is further understood and agreed that this right of setoff is in addition to, and not in lieu of, any other right, remedy or recourse which is available to the Cooperative either at law or equity, and that failure to exercise such right of setoff in any instance shall not constitute a waiver of such right

## **RACK RATE/INDEX PRICED FUELS ADDITIONAL TERMS AND CONDITIONS**

The Rack Rate/Index-Priced Fuels Additional Terms and Conditions (“Additional Terms and Conditions”) set out below apply to and are incorporated into PART TWO of this Proposal Invitation. These Additional Terms and Conditions are intended to supplement and be harmonized with PART TWO, Rack Rate/Index-Priced Fuels General Terms and Conditions. In the event of a conflict or inconsistency, these Additional Terms and Conditions control only to the extent necessary to resolve the conflict.

### **1. VERIFICATION OF FUEL PRICES**

Vendor shall furnish each Cooperative member a letter of verification of the applicable Rack or Index Price on delivery date from Vendor’s supplier with each invoice.

### **2. TAXES**

Political subdivisions are generally exempt from sales, excise and usage taxes. Cooperative members will only pay those taxes, without markup, from which they are not exempt. Invoices must show and payment will include the applicable State Road Use Taxes upon receipt and acceptance of all Fuel ordered and receipt of a valid invoice.

### **3. FUEL**

All Fuel delivered will be high quality, volatile hydrocarbon fuel free from any foreign substances or water, or any alcohol additives or extenders which may damage vehicles/equipment or contaminate storage tanks. All Fuel sold shall be of the same quality or better than that which is available to the general public through retail outlets.

### **4. TEMPERATURE ADJUSTMENT**

Vendor shall make compensation for change in temperature of Fuel at loading point at the time the Fuel was unloaded into the transport and must show the correction and adjustment made in gallons delivered to each entity using 60 degrees Fahrenheit as the normal temperature reading. Delivery slips reflecting gross gallons temperature and adjusted gallons must be available at the time of delivery.

### **5. DELIVERY LOADS/LOCATIONS**

Delivery loads may vary and Vendor may be required to split deliveries at different locations. Fuels are to be delivered F.O.B. to storage tanks as directed by Cooperative member. Vendor will be responsible for insuring constant availability of Fuel at these various locations and in the event of a Fuel shortage, and must be capable of providing Fuel to each Cooperative member. Failure to insure constant availability of Fuel will constitute an event of default under the Contract.

### **6. SUBCONTRACTORS**

If Vendor requires the services of other persons or companies (subcontractors) in the performance of the Contract, Vendor will assure that all subcontractors have the insurance coverage required by the Cooperative member. Vendor agrees that any claim or demands by subcontractors will be settled by Vendor and agrees to be responsible for settlement with subcontractors.

### **7. LOADING FEES**

A loading fee will comply with the declining fee schedule as outlined in Section 26.3574(b) of the Texas Water Code.

### **8. COLD WEATHER ADDITIVE**

Cooperative members may request that a fuel additive be added to deliveries of diesel Fuel or other Fuel, if appropriate. This would be ordered on an as-needed basis. The additive shall be provided by and added to the Fuel by Vendor. Vendor must state the pricing for providing and adding additive to diesel Fuel and how many gallons of Fuel will be treated by one gallon of fuel additive and provide the brand of the product. Vendor must also include a copy of the technical data and Material Safety Data Sheet for the additive and specify the additive’s performance characteristics.



## PROPOSAL SPECIFICATION FORM

### PART TWO: RACK RATE AND INDEX PRICED FUELS

**PROPOSAL NOTE 1:** All proposal prices shall not include State Road Use Taxes.

**PROPOSAL NOTE 2:** PROPOSER MUST ATTACH AN IDENTIFIABLE TYPICAL ANALYSIS SHEET BASED ON ACTUAL TEST RESULTS SHOWING THE PROPERTIES OF THE PRODUCT TO THIS PROPOSAL SPECIFICATION FORM. FAILURE TO INCLUDE THE REQUIRED SHEETS WITH THE PROPOSAL MAY CAUSE THE PROPOSAL TO BE REJECTED.

<b>SECTION I: TRANSPORTATION FUELS – RACK RATE</b>			
Item No.	Full Description	Circle One: Plus or Minus (+ or -)	State Mark-Up or Mark-Down Amount Per Gallon (Based on Daily Rack Rate)
1	<b>SUPER UNLEADED GASOLINE, Rack Rate, <u>fuel tanker load</u>,</b> minimum octane rating: 93.  State octane rating: _____.  State size of tanker load: min _____; max _____.	Plus (+)  or  Minus (-)	\$ _____
2	<b>MID-UNLEADED GASOLINE, Rack Rate, <u>fuel tanker load</u>,</b> minimum octane rating: 89.  State octane rating: _____.  State size of tanker load: min _____; max _____.	Plus (+)  or  Minus (-)	\$ _____
3	<b>UNLEADED GASOLINE, Rack Rate, <u>fuel tanker load</u>,</b> minimum octane rating: 87.  State octane rating: _____.  State size of tanker load: min _____; max _____.	Plus (+)  or  Minus (-)	\$ _____
4	<b>NO. 2 ULTRA LOW-SULPHUR DIESEL, Rack Rate, <u>fuel tanker load</u>,</b> minimum octane no.: 40; maximum Sulphur: 15 ppm.  State octane and Sulphur rating: _____.  State size of tanker load: min _____; max _____.	Plus (+)  or  Minus (-)	\$ _____



Item No.	Full Description	Circle One: Plus or Minus (+ or -)	State Mark-Up or Mark-Down Amount Per Gallon (Based on Daily Rack Rate)
5	<b>SUPER UNLEADED GASOLINE</b> , Rack Rate, <b><u>fuel tank wagon load</u></b> , minimum octane rating: 93. State octane rating: _____. State size of tank wagon load: min _____; max _____.	Plus (+) or Minus (-)	\$ _____
6	<b>MID-UNLEADED GASOLINE</b> , Rack Rate, <b><u>fuel tank wagon load</u></b> , minimum octane rating: 89. State octane rating: _____. State size of tank wagon load: min _____; max _____.	Plus (+) or Minus (-)	\$ _____
7	<b>UNLEADED GASOLINE</b> , Rack Rate, <b><u>fuel tank wagon load</u></b> , minimum octane rating: 87. State octane rating: _____. State size of tank wagon load: min _____; max _____.	Plus (+) or Minus (-)	\$ _____
8	<b>NO. 2 ULTRA LOW-SULPHUR DIESEL</b> , Rack Rate, <b><u>fuel tank wagon load</u></b> , minimum octane no.: 40; maximum Sulphur: 15 ppm. State octane and Sulphur rating: _____. State size of tank wagon load: min _____; max _____.	Plus (+) or Minus (-)	\$ _____
Item No.	Full Description	Price	
9	<b>Pump Off Charge</b> , if required	\$ _____	
10	<b>Multiple Drop Charge</b> , if required	\$ _____	
11	<b>Fuel Additive</b> , cost per gallon to add additive to fuel delivery State brand of additive: _____. State number of gallons of fuel treated by one gallon of fuel additive: _____.	\$ _____	
12	<b>Additional Cost for Small Load Sizes</b> , less than 500 gallons.	\$ _____	

<b>SECTION II: TRANSPORTATION FUELS – OPIS</b>			
Item No.	Full Description	Circle One: Plus or Minus (+ or -)	State Mark-Up or Mark-Down Amount Per Gallon (Based on Daily OPIS Rate)
13	<b>SUPER UNLEADED GASOLINE</b> , OPIS Rate, <b><u>fuel tanker load</u></b> , minimum octane rating: 93. State octane rating: _____. State size of tanker load: min _____; max _____.	Plus (+)  or  Minus (-)	\$ _____
14	<b>MID-UNLEADED GASOLINE</b> , OPIS Rate, <b><u>fuel tanker load</u></b> , minimum octane rating: 89. State octane rating: _____. State size of tanker load: min _____; max _____.	Plus (+)  or  Minus (-)	\$ _____
15	<b>UNLEADED GASOLINE</b> , OPIS Rate, <b><u>fuel tanker load</u></b> , minimum octane rating: 87. State octane rating: _____. State size of tanker load: min _____; max _____.	Plus (+)  or  Minus (-)	\$ _____
16	<b>NO. 2 ULTRA LOW-SULPHUR DIESEL</b> , OPIS Rate, <b><u>fuel tanker load</u></b> , minimum octane no.: 40; maximum Sulphur: 15 ppm. State octane and Sulphur rating: _____. State size of tanker load: min _____; max _____.	Plus (+)  or  Minus (-)	\$ _____
Item No.	Full Description	Circle One: Plus or Minus (+ or -)	State Mark-Up or Mark-Down Amount Per Gallon (Based on Daily Rack Rate)
17	<b>SUPER UNLEADED GASOLINE</b> , OPIS Rate, <b><u>fuel tank wagon load</u></b> , minimum octane rating: 93. State octane rating: _____. State size of tank wagon load: min _____; max _____.	Plus (+)  or  Minus (-)	\$ _____



Item No.	Full Description	Circle One: Plus or Minus (+ or -)	State Mark-Up or Mark-Down Amount Per Gallon (Based on Daily Rack Rate)
18	<b>MID-UNLEADED GASOLINE</b> , OPIS Rate, <b><u>fuel tank wagon load</u></b> , minimum octane rating: 89. State octane rating: _____. State size of tank wagon load: min _____; max _____.	Plus (+) or Minus (-)	\$ _____
19	<b>UNLEADED GASOLINE</b> , OPIS Rate, <b><u>fuel tank wagon load</u></b> , minimum octane rating: 87. State octane rating: _____. State size of tank wagon load: min _____; max _____.	Plus (+) or Minus (-)	\$ _____
20	<b>NO. 2 ULTRA LOW-SULPHUR DIESEL</b> , OPIS Rate, <b><u>fuel tank wagon load</u></b> , minimum octane no.: 40; maximum Sulphur: 15 ppm. State octane and Sulphur rating: _____. State size of tank wagon load: min _____; max _____.	Plus (+) or Minus (-)	\$ _____
Item No.	Full Description	Price	
21	<b>Pump Off Charge</b> , if required	\$ _____	
22	<b>Multiple Drop Charge</b> , if required	\$ _____	
23	<b>Fuel Additive</b> , cost per gallon to add additive to fuel delivery State brand of additive: _____. State number of gallons of fuel treated by one gallon of fuel additive: _____	\$ _____	
24	<b>Additional Cost for Small Load Sizes</b> , less than 500 gallons.	\$ _____	

# PROPOSAL FORMS



## **PROPOSER'S ACCEPTANCE AND AGREEMENT**

**Proposal Invitation Name:** Transportation Fuels  
(Unleaded Gasoline and Diesel Fuel)

**Proposal Due Date/Opening Date and Time:**  
June 11, 2026, at 2:00 PM

**Proposal Invitation Number:** TEC 109-26

**Location of Proposal Opening:**  
Texas Association of School Boards, Inc.  
12007 Research Blvd.  
Austin, TX 78759

**Contract Term:** September 1, 2026, through August  
31, 2027, with four possible one-year renewals.

**Anticipated Cooperative Board Meeting Date:**  
July 2026

**Vendor must specify below each item(s) for which Vendor is submitting a Proposal (check all that apply):**

- PART ONE, Fixed-Rate Fuels – Unleaded Gasoline
- PART ONE, Fixed-Rate Fuels – Diesel Fuel
- PART TWO, Rack Rate and Index Priced Fuels – Unleaded Gasoline – Rack Rate
- PART TWO, Rack Rate and Index Priced Fuels – Diesel Fuel – Rack Rate
- PART TWO, Rack Rate and Index Priced Fuels – Unleaded Gasoline – OPIS
- PART TWO, Rack Rate and Index Priced Fuels – Diesel Fuel – OPIS

*By signature below, the undersigned acknowledges and agrees that you are authorized to submit this Proposal, including making all acknowledgements, consents, and certifications herein, on behalf of Proposer and, to the best of your knowledge, the information provided is true, accurate, and complete.*

\_\_\_\_\_  
Name of Proposing Company

\_\_\_\_\_  
Date

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Signature of Authorized Company Official

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Printed Name of Authorized Company Official

\_\_\_\_\_  
Telephone Number of Authorized Company Official

\_\_\_\_\_  
Position or Title of Authorized Company Official

\_\_\_\_\_  
Fax Number of Authorized Company Official

\_\_\_\_\_  
Federal ID Number

## **PROPOSAL FORMS SECTION 1: COMPLIANCE FORMS**

### **INSTRUCTIONS:**

Proposer must review and complete all forms in this Proposal Forms Section 1:

- Proposal Acknowledgements
- Felony Conviction Disclosure
- Resident/Nonresident Certification
- Debarment Certification
- Vendor Employment Certification
- No Israel Boycott Certification
- No Excluded Nation or Foreign Terrorist Organization Certification
- Historically Underutilized Business Certification
- Deviation and Compliance
- Confidential/Proprietary Information
- EDGAR Vendor Certification
- Compliance Forms Signature Page

**An authorized representative of Proposer must initial in the bottom right corner of each page where indicated and complete and sign the Compliance Forms Signature Page. Proposer's failure to fully complete, initial, and sign forms as required may result in your Proposal being rejected as non-responsive.**

### **PROPOSAL ACKNOWLEDGEMENTS**

The proposing company ("you" or "your") hereby acknowledges and agrees as follows:

1. You have carefully examined and understand all information and documentation associated with this Proposal Invitation, including the Proposal Submission Requirements, General Information, Fixed-Rate Fuel General Terms and Conditions, Rack Rate/Index-Priced Fuels General Terms and Conditions, Rack Rate/Index-Priced Fuels Additional Terms and Conditions, attachments/forms, appendices, item specifications, and line items (collectively "Requirements");
2. By your response ("Proposal"), if applicable, to PART TWO of this Proposal Invitation for Rack Rate and Index-Priced Fuels, you propose to supply the products or services submitted at the pricing quoted in your Proposal and in strict compliance with the Requirements, unless specific deviations or exceptions are noted in the Proposal;
3. By your Proposal, you acknowledge and certify all Certifications set forth in the applicable General Terms and Conditions, including all non-collusion certifications and certifications regarding legal, ethical, and other matters set forth therein.
4. Any and all deviations and exceptions to the Requirements have been noted in your Proposal on the required form and no others will be claimed;
5. If the Cooperative accepts any part of your Proposal and awards you a Contract, you will furnish in strict compliance with the Requirements (unless specific deviations or exceptions are noted on the required form and accepted by the Cooperative), including without limitation the Requirements related to:
  - a. conducting business with Cooperative members, including offering pricing to members that is the best you offer compared to similarly situated customers in similar circumstances;
  - b. payment of an administrative fee or service fee in the amount specified and as provided for in this Proposal Invitation;
  - c. the **possible** award of a piggy-back contract by the National Purchasing Cooperative under PART TWO, Rack Rate and Index-Priced Fuels, in which event you will offer the awarded products and services in accordance with the Requirements; and

**Initial:** \_\_\_\_\_

6. You have clearly identified on the included form any information in your Proposal that you believe to be confidential or proprietary or that you do not consider to be public information subject to public disclosure under the Texas Public Information Act or similar public information law;
7. The individual submitting this Proposal is duly authorized to enter into the contractual relationship represented by this Proposal Invitation on your behalf and bind you to the Requirements, and such individual (and any individual signing a form or Proposal document) is authorized and has the requisite knowledge to provide the information and make the representations and certifications required in the Requirements;
8. You have carefully reviewed your Proposal, and certify that all information provided is true, complete, and accurate to the best of your knowledge, and you authorize the Cooperative to take such action as it deems appropriate to verify such information; and
9. Any misstatement, falsification, or omission in your Proposal, whenever or however discovered, will be grounds for disqualifying you from consideration for a contract award under this Proposal Invitation, termination of a contract award, or any other remedy or action provided for in the General Terms and Conditions or by law.

## **FELONY CONVICTION DISCLOSURE**

**Subsection (a) of Section 44.034 of the Texas Education Code (Notification of Criminal History of Contractor)** 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 has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony."

**Section 44.034 further states in Subsection (b):** "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."

Please check (√) one of the following:

- My company is a publicly-held corporation. (Advance notice requirement does not apply to publicly-held corporation.)
- My company is not owned or operated by anyone who has been convicted of a felony.
- My company is owned/operated by the following individual(s) who has/have been convicted of a felony:

Name of Felon(s): \_\_\_\_\_

Details of Conviction(s): \_\_\_\_\_

\_\_\_\_\_

**Initial:** \_\_\_\_\_

## **RESIDENT / NONRESIDENT CERTIFICATION**

Chapter 2252, Subchapter A, of the Texas Government Code establishes certain requirements applicable to proposers who are not Texas residents. Under the statute, a "resident" proposer is a person whose principal place of business is in Texas, including a contractor whose ultimate parent company or majority owner has its principal place of business in Texas. A "nonresident" proposer is a person who is not a Texas resident. Please indicate the status of your company as a "resident" proposer or a "nonresident" proposer under these definitions.

Please check (√) one of the following:

- I certify that my company is a **Resident Proposer**.
- I certify that my company is a **Nonresident Proposer**.

If your company is a Nonresident Proposer, you must provide the following information for your resident state (the state in which your company's principal place of business is located):

Company Name	Address	
City	State	Zip Code

- A. Does your resident state require a proposer whose principal place of business is in Texas to under-price proposers whose resident state is the same as yours by a prescribed amount or percentage to receive a comparable contract?  
 Yes       No
- B. What is the prescribed amount or percentage? \$ \_\_\_\_\_ or \_\_\_\_\_ %

## **DEBARMENT CERTIFICATION**

By signature on the Compliance Forms Signature Page, I certify that neither my company nor an owner or principal of my company has been debarred, suspended or otherwise made ineligible for participation in Federal Assistance programs under Executive Order 12549, "Debarment and Suspension," as described in the Federal Register and Rules and Regulations. Neither my company nor an owner or principal of my company is currently listed on the government-wide exclusions in SAM, debarred, suspended, or otherwise excluded by agencies or declared ineligible under any statutory or regulatory authority. My company agrees to immediately notify the Cooperative and all Cooperative members with pending purchases or seeking to purchase from my company if my company or an owner or principal is later listed on the government-wide exclusions in SAM, or is debarred, suspended, or otherwise excluded by agencies or declared ineligible under any statutory or regulatory authority.

## **VENDOR EMPLOYMENT CERTIFICATION**

Section 44.031(b) of the Texas Education Code establishes certain criteria that a school district must consider when determining to whom to award a contract. Among the criteria for certain contracts is whether the vendor or the vendor's ultimate parent or majority owner (i) has its principal place of business in Texas; or (ii) employs at least 500 people in Texas.

If neither your company nor the ultimate parent company or majority owner has its principal place of business in Texas, does your company, ultimate parent company, or majority owner employ at least 500 people in Texas?

Please check (√) one of the following:

- Yes       No

**Initial:** \_\_\_\_\_

## **No BOYCOTT VERIFICATION**

A Texas governmental entity may not enter into a contract with a value of \$100,000 or more that is to be paid wholly or partly from public funds with a company (excluding a sole proprietorship) that has 10 or more full-time employees for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel and will not boycott Israel during the term of the contract (TEX. GOV'T CODE Ch. 2271), (2) does not boycott energy companies and will not boycott energy companies during the term of the contract (TEX. GOV'T CODE Ch. 2276), and (3) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association (TEX. GOV'T CODE Ch. 2274). Accordingly, this certification form is included to the extent required by law.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. TEX. GOV'T CODE §808.001(1).

"Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by Paragraph (A). TEX. GOV'T CODE §809.001(1).

"Discriminate against a firearm entity or firearm trade association" means, (A) with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; and (B) does not include: (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship: (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association. TEX. GOV'T CODE §2274.001(3).

By signature on the Compliance Forms Signature Page, to the extent applicable, I certify and verify that Vendor does not boycott Israel, boycott energy companies, or discriminate against a firearm entity or firearm trade association and will not do so during the term of any contract awarded under this Proposal Invitation, that this certification is true, complete and accurate, and that I am authorized by my company to make this certification.

**Initial:** \_\_\_\_\_

## **NO EXCLUDED NATION OR FOREIGN TERRORIST ORGANIZATION CERTIFICATION**

Chapter 2252 of the Texas Government Code provides that a Texas governmental entity may not enter into a contract with a company engaged in active business operations with Sudan, Iran, or a foreign terrorist organization – specifically, any company identified on a list prepared and maintained by the Texas Comptroller under Texas Government Code §§806.051, 807.051, or 2252.153. (A company that the U.S. Government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to the contract prohibition.)

By signature on the Compliance Forms Signature Page, I certify and verify that Vendor is not on the Texas Comptroller's list identified above; that this certification is true, complete and accurate; and that I am authorized by my company to make this certification.

## **HISTORICALLY UNDERUTILIZED BUSINESS CERTIFICATION**

**The Cooperative does not evaluate the Proposer's responses provided to this HUB certification form or consider HUB certification status as part of the proposal evaluation or award criteria set out in the General Terms and Conditions. This form is requested solely for informational purposes for Cooperative members to the extent it may be relevant to an individual Cooperative member's federal, state or local requirements.**

A Proposer that has been certified as a Historically Underutilized Business (also known as a Minority/Women Business Enterprise or "MWBE" and all referred to in this form as a "HUB") is encouraged to indicate its HUB certification status when responding to this Proposal Invitation. *(Please check (✓) all that apply)*

- I certify that my company has been certified as a HUB in the following categories:
- Minority Owned Business**
  - Women Owned Business**
  - Service-Disabled Veteran Owned Business (veteran defined by 38 U.S.C. §101(2), who has a service-connected disability as defined by 38 U.S.C. § 101(16), and who has a disability rating of 20% or more as determined by the U. S. Department of Veterans Affairs or Department of Defense)**

**Certification Number:** \_\_\_\_\_

**Name of Certifying Agency:** \_\_\_\_\_

- My company has **NOT** been certified as a HUB.

**Initial:** \_\_\_\_\_



## **CONFIDENTIAL / PROPRIETARY INFORMATION**

### **A. Public Disclosure Laws**

All Proposals, forms, documentation, pricing, or other materials submitted by Vendor to the Cooperative in response to this Proposal Invitation, may be subject to the disclosure requirements of the Texas Public Information Act (Texas Government Code chapter 552.001, *et. seq.*) or similar disclosure law. Proposer must clearly identify on this form any information in its Proposal (including forms, documentation, or other materials submitted with the Proposal) that Proposer considers proprietary or confidential. If Proposer fails to properly identify the information, the Cooperative shall have no obligation to notify Vendor or seek protection of such information from public disclosure should a member of the public or other third party request access to the information under the Texas Public Information Act or similar disclosure law. When required by the Texas Public Information Act or other disclosure law, Proposer may be notified of any third-party request for information in a Proposal that Proposer has identified in this form as proprietary or confidential.

Does your Proposal (including forms, documentation, pricing, or other materials submitted with the Proposal) contain information which Vendor considers proprietary or confidential?

Please check (✓) one of the following:

**NO**, I certify that none of the information included with this Proposal is considered confidential or proprietary.

**YES**, I certify that this Proposal contains information considered confidential or proprietary and all such information is specifically identified on this form.

If you responded "YES", you must clearly identify below the specific information you consider confidential or proprietary. List each page number, form number, or other information sufficient to make the information readily identifiable. The Cooperative and Cooperative Administrator shall not be responsible for a Proposer's failure to clearly identify information considered confidential or proprietary. Further, by submitting a Proposal, Proposer acknowledges that the Cooperative and Cooperative Administrator will disclose information when required by law, even if such information has been identified herein as information Vendor considers confidential or proprietary.

Confidential / Proprietary Information:

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*(Attach additional sheets if needed.)*

**Initial:** \_\_\_\_\_

**B. Copyright Information**

Does your Proposal (including forms, documentation, pricing, or other materials submitted with the Proposal) contain copyright information?

Please check (✓) one of the following:

- NO**, Proposal (including forms, documentation, pricing, or other materials submitted with the Proposal) does not contain copyright information.
- YES**, Proposal (including forms, documentation, pricing, or other materials submitted with the Proposal) does contain copyright information.

If you responded "YES", clearly identify below the specific documents or pages containing copyright information.

Copyright Information: \_\_\_\_\_

\_\_\_\_\_

*(Attach additional sheets if needed.)*

**C. Consent to Release Confidential/Proprietary/Copyright Information to Cooperative Members**

Cooperative members seeking to make purchases through the Energy Cooperative may wish to view information included in the Proposals of awarded Vendors. If you identified information on this form as confidential, proprietary, or subject to copyright, and you are awarded a Contract, your acceptance of the Contract award constitutes your consent to the disclosure of such information to Cooperative members, Note: Neither the Cooperative nor Cooperative Administrator will be responsible for the use or distribution of information by Cooperative members or any other party.

**D. Consent to Release Proposal Tabulation**

Notwithstanding anything in this Confidential/Proprietary Information form to the contrary, by submitting a Proposal, Vendor consents and agrees that, upon Contract award, the Cooperative may publicly release, including posting on the public Cooperative website, a copy of the proposal tabulation and award information for the Contract including Vendor name; specified pricing; and Vendor award or non-award information.

**Initial:** \_\_\_\_\_

## **EDGAR VENDOR CERTIFICATION** **(2 CFR Part 200 and Appendix II)**

When a Cooperative member seeks to procure goods and services using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. This includes, but is not limited to, the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR 200 (sometimes referred to as the "Uniform Guidance" or new "EDGAR"). All Vendors submitting a Proposal must complete this EDGAR Certification Form regarding Vendor's willingness and ability to comply with certain requirements which *may* be applicable to specific Cooperative member purchases using federal grant funds. Completed forms will be made available to Cooperative members for their use while considering their purchasing options when using federal grant funds. Cooperative members may also require Vendors to enter into ancillary agreements to address the member's specific contractual needs, including contract requirements for a procurement using federal grants or contracts.

*For each of the items below, Vendor should certify Vendor's agreement and ability to comply, where applicable, by having Vendor's authorized representative check the applicable boxes, initial each page, and sign the Compliance Forms Signature Page. If you fail to complete any item in this form, the Cooperative will consider and may identify the Vendor's response as "NO," the Vendor is unable or unwilling to comply. A "NO" response to any of the items may, if applicable, impact the ability of a Cooperative member to purchase from the Vendor using federal funds.*

### **1. Vendor Violation or Breach of Contract Terms:**

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 USC 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.

Provisions regarding Vendor default are included in the applicable General Terms and Conditions of the Contract and, for PART ONE Fixed-Rate Fuels, the Purchase Agreement form. Any Contract award will be subject to such provisions, as well as any additional terms and conditions in any Cooperative member ancillary contract agreed upon by Vendor and the Cooperative member which must be consistent with and protect the Cooperative member at least to the same extent as the Contract Terms and Conditions. The remedies under the Contract are in addition to any other remedies that may be available under law or in equity. By submitting a Proposal, you agree to these Vendor violation and breach of contract terms.

**YES**, I agree.

**NO**, I do not agree.

### **2. Termination for Cause or Convenience:**

For any Cooperative member purchase or contract in excess of \$10,000 made using federal funds, you agree that the following term and condition shall apply:

*The Cooperative member may terminate or cancel any Purchase Order or Purchase Agreement under this Contract at any time, with or without cause, by providing seven (7) business days advance written notice to the Vendor. If this Agreement is terminated in accordance with this Paragraph, the Cooperative member shall only be required to pay Vendor for goods or services delivered to the Cooperative member prior to the termination and not otherwise returned in accordance with Vendor's return policy. If the Cooperative member has paid Vendor for goods or services not yet provided as of the date of termination, Vendor shall immediately refund such payment(s).*

If an alternate provision for termination of a Cooperative member purchase for cause and convenience, including the manner by which it will be effected and the basis for settlement, is included in the Cooperative member's Purchase Order or ancillary agreement agreed to by the Vendor, the Cooperative member's provision shall control.

**YES**, I agree.

**NO**, I do not agree.

**Initial:** \_\_\_\_\_

**3. Equal Employment Opportunity:**

Except as otherwise provided under 41 CFR Part 60, all Cooperative member purchases or contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall be deemed to include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

The equal opportunity clause provided under 41 CFR 60-1.4(b) is hereby incorporated by reference. Vendor agrees that such provision applies to any Cooperative member purchase or contract that meets the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 and Vendor agrees that it shall comply with such provision.

**YES**, I agree.  **NO**, I do not agree.

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**4. Davis-Bacon Act:**

When required by Federal program legislation, Vendor agrees that, for all Cooperative member prime construction contracts/purchases in excess of \$2,000, Vendor shall comply with the Davis-Bacon Act (40 USC 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, Vendor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determinate made by the Secretary of Labor. In addition, Vendor shall pay wages not less than once a week.

Current prevailing wage determinations issued by the Department of Labor are available at [beta.sam.gov](http://beta.sam.gov). Vendor agrees that, for any purchase to which this requirement applies, the award of the purchase to the Vendor is conditioned upon Vendor's acceptance of the wage determination.

Vendor further agrees that it shall also comply with the Copeland "Anti-Kickback" Act (40 USC 3145), 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.

**YES**, I agree.  **NO**, I do not agree.

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**5. Contract Work Hours and Safety Standards Act:**

Where applicable, for all Cooperative member contracts or purchases in excess of \$100,000 that involve the employment of mechanics or laborers, Vendor agrees to comply with 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 USC 3702 of the Act, Vendor is 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 USC 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.

**YES**, I agree.  **NO**, I do not agree.

**Initial:** \_\_\_\_\_

**6. Right to Inventions Made Under a Contract or Agreement:**

If the Cooperative member's Federal award meets the definition of "funding agreement" under 37 CFR 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance or experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Vendor agrees to comply with the above requirements when applicable.

**YES**, I agree.  **NO**, I do not agree.

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**7. Clean Air Act and Federal Water Pollution Control Act:**

Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act (33 USC 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 USC 7401-7671q.) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

When required, Vendor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act.

**YES**, I agree.  **NO**, I do not agree.

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**8. Debarment and Suspension:**

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 1966 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.

Vendor certifies that Vendor is not currently listed on the government-wide exclusions in SAM, is not debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549. Vendor further agrees to immediately notify the Cooperative and all Cooperative members with pending purchases or seeking to purchase from Vendor if Vendor is later listed on the government-wide exclusions in SAM, or is debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**YES**, I agree.  **NO**, I do not agree.

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**9. Byrd Anti-Lobbying Amendment:**

Byrd Anti-Lobbying Amendment (31 USC 1352) - Vendors 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 USC 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. As applicable, Vendor agrees to file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 USC 1352).

**YES**, I agree.  **NO**, I do not agree.

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**Initial:** \_\_\_\_\_

**10. Procurement of Recovered Materials:**

For Cooperative member purchases utilizing Federal funds, Vendor agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act where applicable and provide such information and certifications as a Cooperative member may require to confirm estimates and otherwise comply. 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.

**YES**, I agree.  **NO**, I do not agree.

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**11. Domestic Preferences for Procurements:**

Where appropriate and consistent with law, 2 CFR §200.322 contains certain considerations for domestic preferences for procurements which may be applicable to Cooperative members using federal funds. When required by a Cooperative member, Vendor agrees to provide such information or certification as may reasonably be requested by the Cooperative member regarding Vendor's products, including whether goods, products, or materials are produced in the United States.

**YES**, I agree.  **NO**, I do not agree.

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**12. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

2 CFR §200.216 prohibits expending federal loan or grant funds to procure or obtain certain telecommunications and video surveillance services or equipment. To the extent applicable and when required by a Cooperative member, Vendor agrees to provide such information or certification as may reasonably be requested by the Cooperative member to confirm whether any telecommunications or video surveillance services or equipment provided by Vendor is covered equipment or covered services under 2 CFR §200.216.

**YES**, I agree.  **NO**, I do not agree.

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**13. Profit as a Separate Element of Price:**

For purchases using federal funds in excess of the Simplified Acquisition Threshold, a Cooperative member may be required to negotiate profit as a separate element of the price. See, 2 CFR 200.324(b). When required by a Cooperative member, Vendor agrees to provide information and negotiate with the Cooperative member regarding profit as a separate element of the price for a particular purchase. However, Vendor agrees that the total price, including profit, charged by Vendor to the Cooperative member shall not exceed the awarded pricing, including any applicable discount, under Vendor's Cooperative Contract.

**YES**, I agree.  **NO**, I do not agree.

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**14. General Compliance and Cooperation with Cooperative Members:**

In addition to the foregoing specific requirements, Vendor agrees, in accepting any Purchase Order or Purchase Agreement from a Cooperative member, it shall make a good faith effort to work with Cooperative members to provide such information and to satisfy such requirements as may apply to a particular Cooperative member purchase or purchases including, but not limited to, applicable recordkeeping and record retention requirements.

**YES**, I agree.  **NO**, I do not agree.

**Initial:** \_\_\_\_\_

## **COMPLIANCE FORMS SIGNATURE PAGE**

By initialing pages and by signature below, I certify that I have reviewed the following forms; that the information provided therein is true, complete, and accurate; and that I am authorized by my company to make all certifications, consents, acknowledgements, and agreements contained herein:

- Proposal Acknowledgements
- Felony Conviction Disclosure
- Resident/Nonresident Certification
- Debarment Certification
- Vendor Employment Certification
- No Israel Boycott Certification
- No Excluded Nation or Foreign Terrorist Organization Certification
- Historically Underutilized Business Certification
- Deviation and Compliance
- Confidential/Proprietary Information
- EDGAR Vendor Certification

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Authorized Company Official

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

## **PROPOSAL FORMS SECTION 2: VENDOR INFORMATION FORMS**

### **INSTRUCTIONS:**

Proposer must completely and accurately provide all information requested in the following Vendor Information Forms or your Proposal may be rejected as non-responsive:

- Vendor Business Name
- Vendor Contact Information
- Governmental References
- Freight Rates and Other Delivery Charges
- Texas Regional Service Designation
- State Service Designation
- National Purchasing Cooperative Vendor Award Agreement (*Vendors serving outside Texas only*)
- Service Location Listings
- Proposal Invitation Questionnaire

To the extent any information requested is not applicable to your company, you must so indicate on the form.

### **VENDOR BUSINESS NAME**

By submitting a Proposal, Vendor is seeking to enter into a legal contract with the Cooperative. As such, Vendor must be an individual or legal business entity capable of entering into a binding contract.

**Name of Proposing Company:** \_\_\_\_\_  
*(List the legal name of the company seeking to contract with the Cooperative. Do NOT list an assumed name, dba, aka, etc. here. Such information may be provided below. If you are submitting a joint proposal with another entity to provide the same proposed goods or services, each submitting entity should complete a separate vendor information form. Separately operating legal business entities, even if affiliated entities, which propose to provide goods or services separately must submit their own Proposals.)*

Please check (✓) one of the following:

**Type of Business:**     Individual/Sole Proprietor     Corporation     Limited Liability Company     Partnership  
                                  Other (Specify: \_\_\_\_\_)

**State of Incorporation** (if applicable): \_\_\_\_\_

**Federal Employer Identification Number:** \_\_\_\_\_  
*(Vendor must include a completed IRS W-9 form with their Proposal)*



## **VENDOR CONTACT INFORMATION**

### **Proposal/Contract Contact:**

Vendor Proposal/Contract Contact Name: \_\_\_\_\_

Vendor Proposal/Contract Contact E-mail Address: \_\_\_\_\_

Vendor Contact Mailing Address for Proposal/Contract Notices: \_\_\_\_\_

\_\_\_\_\_

Company Website: \_\_\_\_\_

**Purchase Orders Contact Information:** Vendors need Internet access and at least one e-mail address so that notification of new orders can be sent to the Internet contact when a new purchase order arrives. **Please provide the following information for receipt of Purchase Orders:**

Purchase Order E-mail Address: \_\_\_\_\_

Purchase Order Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

Alternate Purchase Order E-mail Address: \_\_\_\_\_

Alternate Purchase Order Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

**Request for Quotes ("RFQ"):** Cooperative members will send RFQs to you by e-mail. Please provide e-mail addresses for the receipt of RFQs:

RFQ E-mail Address: \_\_\_\_\_

RFQ Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

Alternate RFQ E-mail Address: \_\_\_\_\_

Alternate RFQ Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

**Invoices:** Your company will be billed monthly for the service fee due under a Contract awarded under this Proposal Invitation. **Please provide the following address, contact, and e-mail information for receive of service fee invoices and related communications:**

**Invoice Mailing address:** \_\_\_\_\_ **Department:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

**Contact Name:** \_\_\_\_\_ **Phone:** \_\_\_\_\_

**Invoice Fax:** \_\_\_\_\_ **Invoice E-mail Address:** \_\_\_\_\_

**Alternative Invoice E-mail Address:** \_\_\_\_\_

### **GOVERNMENTAL REFERENCES**

For your Proposal to be considered, you must supply a minimum of five (5) individual governmental entity references. The Cooperative may contact any and all references provided as part of the Proposal evaluation. Provide the information requested below. Attach additional pages if necessary.

<b>Entity Name</b>	<b>Contact</b>	<b>Phone#</b>	<b>Email Address</b>	<b>Quantity/ Volume</b>
1.				
2.				
3.				
4.				
5.				

### **FREIGHT RATES AND OTHER DELIVERY CHARGES**

Please provide below (attach additional sheets as needed), detailed information on all freight and other delivery or additional charges (e.g. pump charges, diversion charges, demurrage charges, fuel surcharges, multiple drop charge, cost per gallon charges for fuel additive, additional costs for small load sizes (less than 1500 gallons), and other charges) proposed to be charged by your company for goods purchased under any Contract awarded by the Cooperative under this Proposal Invitation. (Attach a copy of any applicable schedule or detailed information on how freight and other delivery charges will be calculated. Please specify the applicable charges for each Fuel type proposed.)

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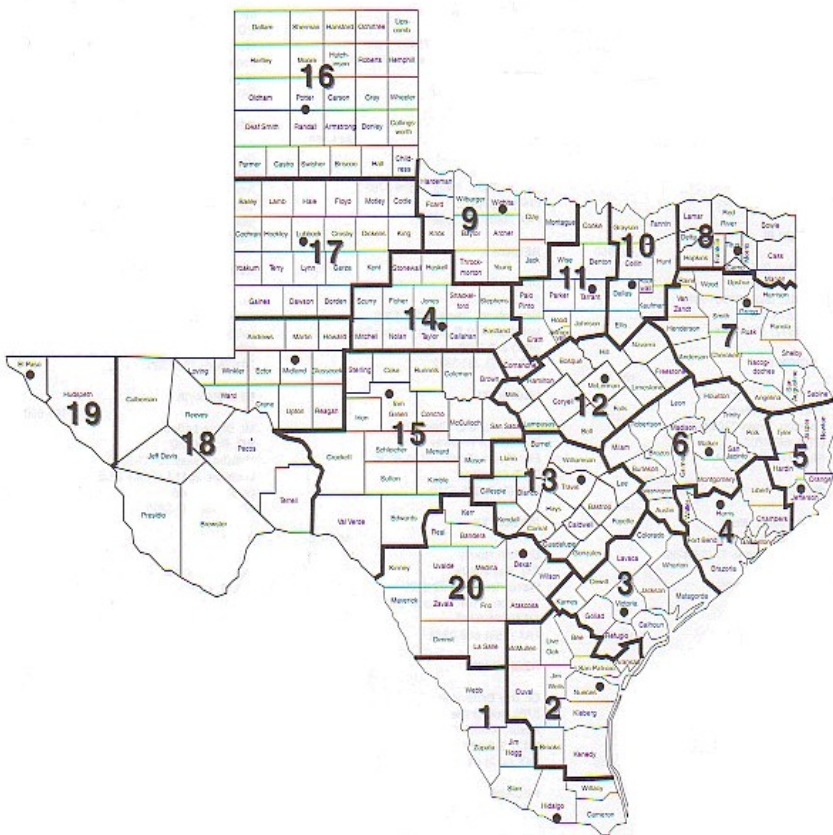
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## TEXAS REGIONAL SERVICE DESIGNATION

The Cooperative (referred to as "Texas Cooperative" in this form and in the State Service Designation form) offers vendors the opportunity to service its members throughout the entire State of Texas. If you do not plan to service all Texas Cooperative members statewide, you **must** indicate the specific regions you will service on this form. If you propose to serve different regions for different products or services included in your Proposal, you must complete and submit a separate Texas Regional Service Designation form for each group of products and clearly indicate the products or services to which the designation applies. ***By designating a region or regions, you are certifying that you are authorized and willing to provide the proposed products and services in those regions. Designating regions in which you are either unable or unwilling to provide the specified products and services shall be grounds for either rejection of your Proposal or, if awarded, termination of your Contract.*** Additionally, if you do not plan to service Texas Cooperative members (i.e., if you will service only states other than Texas), you must so indicate on this form.

### Regional Education Service Centers



- I will service Texas Cooperative members statewide.
- I will not service Texas Cooperative members statewide. I will only service members in the regions checked below:

#### Region and Headquarters

- 1 Edinburg
- 2 Corpus Christi
- 3 Victoria
- 4 Houston
- 5 Beaumont
- 6 Huntsville
- 7 Kilgore
- 8 Mount Pleasant
- 9 Wichita Falls
- 10 Richardson
- 11 Fort Worth
- 12 Waco
- 13 Austin
- 14 Abilene
- 15 San Angelo
- 16 Amarillo
- 17 Lubbock
- 18 Midland
- 19 El Paso
- 20 San Antonio

- I will not service members of the Texas Cooperative.

\_\_\_\_\_  
Company Name

## STATE SERVICE DESIGNATION

As set forth in the Proposal Invitation, other governmental entities in the United States may have the opportunity to purchase some of the goods or services awarded under the Contract, subject to applicable state law, through a piggy-back award or similar agreement through the National Purchasing Cooperative BuyBoard. If you plan to service the entire United States or only specific states, you must complete this form accordingly. *(Note: If you plan to service Texas Cooperative members, be sure that you complete the Texas Regional Service Designation form.) In addition to this form, to be considered for a piggy-back award by the National Purchasing Cooperative, you must have an authorized representative sign the National Purchasing Cooperative Vendor Award Agreement that follows this form.*

If you serve different states for different products included in your Proposal, you must complete and submit a separate State Service Designation form for each group of products and clearly indicate the products or services to which the designation applies. ***By designating a state or states, you are certifying that you are authorized and willing to provide the proposed products in those states. Designating states in which you are either unable or unwilling to provide the specified products and services shall be grounds for either rejection of your Proposal or, if awarded, termination of your Contract.***

Please check (√) all that apply:

- I will service all states in the United States.
- I will not service all states in the United States. I will service only the states checked below:

- |  |   |
|--|---|
| <input type="checkbox"/> Alabama   | <input type="checkbox"/> Nebraska       |
| <input type="checkbox"/> Alaska  | <input type="checkbox"/> Nevada         |
| <input type="checkbox"/> Arizona   | <input type="checkbox"/> New Hampshire  |
| <input type="checkbox"/> Arkansas  | <input type="checkbox"/> New Jersey     |
| <input type="checkbox"/> California (Public Contract Code 20118 & 20652) | <input type="checkbox"/> New Mexico     |
| <input type="checkbox"/> Colorado  | <input type="checkbox"/> New York       |
| <input type="checkbox"/> Connecticut                                     | <input type="checkbox"/> North Carolina |
| <input type="checkbox"/> Delaware  | <input type="checkbox"/> North Dakota   |
| <input type="checkbox"/> District of Columbia                            | <input type="checkbox"/> Ohio           |
| <input type="checkbox"/> Florida   | <input type="checkbox"/> Oklahoma       |
| <input type="checkbox"/> Georgia   | <input type="checkbox"/> Oregon         |
| <input type="checkbox"/> Hawaii  | <input type="checkbox"/> Pennsylvania   |
| <input type="checkbox"/> Idaho   | <input type="checkbox"/> Rhode Island   |
| <input type="checkbox"/> Illinois  | <input type="checkbox"/> South Carolina |
| <input type="checkbox"/> Indiana   | <input type="checkbox"/> South Dakota   |
| <input type="checkbox"/> Iowa  | <input type="checkbox"/> Tennessee      |
| <input type="checkbox"/> Kansas  | <input type="checkbox"/> Texas          |
| <input type="checkbox"/> Kentucky  | <input type="checkbox"/> Utah           |
| <input type="checkbox"/> Louisiana                                       | <input type="checkbox"/> Vermont        |
| <input type="checkbox"/> Maine   | <input type="checkbox"/> Virginia       |
| <input type="checkbox"/> Maryland  | <input type="checkbox"/> Washington     |
| <input type="checkbox"/> Massachusetts                                   | <input type="checkbox"/> West Virginia  |
| <input type="checkbox"/> Michigan  | <input type="checkbox"/> Wisconsin      |
| <input type="checkbox"/> Minnesota                                       | <input type="checkbox"/> Wyoming        |
| <input type="checkbox"/> Mississippi                                     |   |
| <input type="checkbox"/> Missouri  |   |
| <input type="checkbox"/> Montana   |   |

## **NATIONAL PURCHASING COOPERATIVE VENDOR AWARD AGREEMENT**

In accordance with the Terms and Conditions associated with this Proposal Invitation, a contract awarded under this Proposal Invitation may be "piggy-backed" by another governmental entity. The National Purchasing Cooperative is an intergovernmental purchasing cooperative formed by certain school districts outside of Texas to serve its members throughout the United States. If you agree to be considered for a piggy-back award by the National Purchasing Cooperative, you agree to the following terms and agree to serve National Purchasing Cooperative members in the states you have indicated on the State Service Designation form, in your Proposal.

### **By signing this form, Proposer (referred to in this Agreement as "Vendor") agrees as follows:**

1. Vendor acknowledges that if the TASB Energy Cooperative ("Energy Cooperative") awards Vendor a contract under this Proposal Invitation ("Underlying Award"), the National Purchasing Cooperative ("National Cooperative") may - but is not required to - "piggy-back" on or re-award all or a portion of that Underlying Award ("Piggy-Back Award"). By signing this National Cooperative Vendor Award Agreement ("Agreement"), Vendor accepts and agrees to be bound by any such Piggy-Back Award as provided for herein.

2. In the event National Cooperative awards Vendor a Piggy-Back Award, the National Cooperative Administrator ("Administrator") will notify Vendor in writing of such Piggy-Back Award, which award shall commence on the effective date stated in the Notice and end on the expiration date of the Underlying Award, subject to annual renewals as authorized in writing by the Administrator. Vendor agrees that no further signature or other action is required of Vendor in order for the Piggy-Back Award and this Agreement to be binding upon Vendor. Vendor further agrees that no interlineations or changes to this Agreement by Vendor will be binding on National Cooperative, unless such changes are agreed to by the Administrator in writing.

3. Vendor agrees that it shall offer its goods and services to National Cooperative members at the same unit pricing and same general terms and conditions, subject to applicable state laws in the state of purchase, as required by the Underlying Award. However, nothing in this Agreement prevents Vendor from offering National Cooperative members better (i.e., lower) competitive pricing and more favorable terms and conditions than those in the Underlying Award.

4. Vendor hereby agrees and confirms that it will serve those states it has designated on the State Service Designation Form of this Proposal Invitation. Any changes to the states designated on the State Service Designation Form must be approved in writing by the Administrator.

5. Vendor agrees to pay National Cooperative the service fee and administrative fees provided for in the Underlying Award based on the amount of purchases generated from National Cooperative members through the Piggy-Back Award. Vendor shall remit payment to National Cooperative on such schedule as it specifies (which shall not be more often than monthly). Further, upon request, Vendor shall provide National Cooperative with copies of all purchase orders and purchase agreements generated from National Cooperative members, vendor invoices, and/or such other documentation regarding those purchase orders and purchase agreements as the Cooperative's administrators may require in their reasonable discretion for purposes of reviewing and verifying purchase activity. Vendor further agrees that National Cooperative shall have the right, upon reasonable written notice, to review Vendor's records pertaining to purchases made by National Cooperative members in order to verify the accuracy of service and administrative fees.

6. Vendor agrees that the Underlying Award, including the applicable General Terms and Conditions, are adopted by reference to the fullest extent such provisions can reasonably apply to the post-proposal/contract award phase. The rights and responsibilities that would ordinarily inure to the Energy Cooperative pursuant to the Underlying Award shall inure to National Cooperative; and, conversely, the rights and responsibilities that would ordinarily inure to Vendor in the Underlying Award shall inure to Vendor in this Agreement. Vendor recognizes and agrees that Vendor and National Cooperative are the only parties to this Agreement, and that nothing in this Agreement has application to other third parties, including the Energy Cooperative. In the event of conflict between this Agreement and the terms of the Underlying Award, the terms of this Agreement shall control, and then only to the extent necessary to reconcile the conflict.



7. This Agreement shall be governed and construed in accordance with the laws of the State of Texas and venue for any dispute shall lie in the federal district court of Travis County, Texas.

8. Vendor acknowledges and agrees that the award of a Piggy-Back Award is within the sole discretion of National Cooperative, and that this Agreement does not take effect unless and until National Cooperative awards Vendor a Piggy-Back Award and the Administrator notifies Vendor in writing of such Piggy-Back Award as provided for herein.

WHEREFORE, by signing below Vendor agrees to the foregoing and warrants that it has the authority to enter into this Agreement.

\_\_\_\_\_  
Name of Vendor

\_\_\_\_\_  
Proposal Invitation Number

\_\_\_\_\_  
Signature of Authorized Company Official

\_\_\_\_\_  
Printed Name of Authorized Company Official

\_\_\_\_\_  
Date





## **PROPOSAL INVITATION QUESTIONNAIRE**

The Cooperative will use your responses to the questions below in evaluating your Proposal. Proposers must fully answer each question, numbering your responses to correspond to the questions/numbers below. Proposers must complete below or attach your responses to this questionnaire and submit in one document with your Proposal. **You must submit the questionnaire and responses with your Proposal or the Proposal will not be considered.** (NOTE: Only Vendors proposing under PART ONE of this Proposal Invitation for Fixed Rate Fuels are required to respond to Section II, "Additional Questions for Proposers under PART ONE, Fixed Rate Fuels". Vendors proposing under PART TWO, Rack Rate/Index-Priced Fuels only should indicate "N/A" in Section II.)

### **SECTION I: QUESTIONS FOR ALL PROPOSERS – PART ONE AND PART TWO**

1. List the number of years Proposer has been in business and former business names (if applicable). Note whether your company is currently for sale or involved in any transaction that would significantly alter its business or result in acquisition by another entity.

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2. Describe your company's organizational structure, including any parent company and all affiliates and subsidiaries. Provide a summary of the organizational structure, staffing levels, and key members of the business unit that will serve Cooperative members.

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3. Summarize your experience as a Fuel supplier or distributor in Texas and any other locations you propose to serve, including the number of customers you currently service (1) in Texas and (2) in any other state you serve, including customers' cumulative total fuel usage for each Fuel product for which you are submitting a Proposal. Specifically provide information on your experience in serving school districts, local governmental entities, and members of cooperative purchasing programs, and detail your experience in providing service under structures similar to those described in this Proposal Invitation. To the extent available, provide data and statistics demonstrating performance over the last year in achieving customer service and in providing timely and accurate billings.

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4. Marketing Strategy: For your Proposal to be considered, you must submit the Marketing Strategy you will use if the Cooperative accepts all or part of your Proposal. (*Example: Explain how your company will initially inform Cooperative members of your Cooperative Contract, and how you will continue to support the Cooperative for the duration of the Contract term.*) Attach additional pages if necessary.

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5. Describe Proposer’s financial capability to perform the Contract. State or describe the firm’s financial strength and rating, bonding capacity, and insurance coverage limits. State whether the firm, or any of the firm’s past or present owners, principal shareholders or stockholders, or officers, have been a debtor party to a bankruptcy, receivership, or insolvency proceeding in the last 7 years, and identify any such debtor party by name and relationship to or position with your firm.

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6. Does your company have any outstanding financial judgments and/or is it currently in default on any loan or financing agreement? If so, provide detailed information on the nature of such items and prospects for resolution.

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7. List all contracts, if any, in the last 10 years on which Proposer has defaulted, failed to complete or deliver, or that have been terminated for any reason. For each such contract, provide the project name, scope, value and date and the name of the procuring entity. Fully explain the circumstances of the default, failure to complete or deliver, or termination.

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8. List all litigation or other legal proceedings (including arbitration proceedings), if any, in the last 10 years brought against your firm, or any of the firm's past or present owners, principal shareholders or stockholders, officers, agents or employees, that relate to or arise from a contract similar to this Contract or the services contemplated under this Contract. Provide the style of the lawsuit or proceeding (name of parties and court or tribunal in which filed), nature of the claim, and resolution or current status.

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9. Provide an identifiable typical analysis sheet for each Fuel product for which you are submitting a Proposal based on actual test results showing the properties of the products proposed.

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**SECTION II: ADDITIONAL QUESTIONS FOR PROPOSERS UNDER PART ONE, FIXED-RATE FUELS**

1. Provide the most recent annual report, audited financials, 10Q, and/or other recent evidence of your financial performance and resources. If you are a subsidiary or affiliate of another company, or are privately held, state the source of financial backing that will be relied upon to guarantee the performance of fixed-rate Fuel pricing and service that will be offered during the term of the Contract, and provide other evidence of financial performance for the most recent annual period.

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2. Describe your plans for providing customer service to Cooperative members participating in the Fixed-Rate Fuel Program, including the handling of questions concerning billing and service, identification of designated customer representatives, and availability of customer service phone lines. Identify any customer complaints against you or your parent or affiliate, if applicable, filed with the Better Business Bureau or any state or federal court or regulatory agency during the preceding 18 months. With respect to each such complaint, state where the complaint was filed and the substance and resolution of the complaint.

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3. What is the maximum term and for what terms (e.g., one month, twelve months, three years, etc.) are you willing to execute fixed-rate Purchase Agreements with Cooperative members for each Fuel product you propose to provide?

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4. Describe in detail the Cooperative member information that is necessary for you to provide fixed-rate Fuel pricing for each Fuel product you propose to provide (e.g. tank location, tank size, above or below ground tank, etc.)

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5. Describe in detail the process you would follow to ensure proper and prompt delivery of Fuel to Cooperative members and the costs associated with the transportation and delivery of Fuel. For example, if a Cooperative member currently works with a local delivery firm, would the local company be able to deliver Fuel procured by the Cooperative member from you through the Program?

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6. State the number of wholesale counterparties with which you routinely transact for wholesale fuel supply. Describe any policies or procedures your company uses to determine the type of wholesale counterparty with which you transact (i.e., minimum credit or financial requirements, size, etc.).

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7. The Cooperative seeks a transparent pricing formula that will allow calculation of the fixed-price per-gallon using published commodity indices. For each Fuel product your company proposes to provide, explain how your company would derive the fixed price of the Fuel and provide any formulas that would be used to develop the fixed price. Please explain any additives which may be required for your product(s), including additives required for changes in temperature. If an additional cost for additives will be added to the price of the Fuel, provide any formulas or schedules used to determine such price.

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8. As described in the Proposal Invitation, PART ONE, the Selected Vendor for each Fuel Pool must incorporate the applicable Energy Cooperative Administrative Fee into the price of the Fuel, collect the Administrative Fee from Cooperative members participating in a Fuel Pool through billing, and report and remit payment of the Administrative Fee to the Cooperative. Please confirm here your agreement and describe how you will comply. (Please recall that collection and payment of the Administrative Fee is required under the Fixed-Rate Fuel General Terms and Conditions.)

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9. If you are selected as an Approved Vendor, do you agree to market fixed-rate Fuel to Texas School Districts only through the Energy Cooperative Fixed-Rate Fuel Program, as specified in the Proposal Invitation, and not market or provide fixed-rate Fuel during the Panel Term to school districts in Texas outside the Program? Describe in detail how you would help the Cooperative market the Fixed-Rate Fuel Program.

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10. As explained in the Proposal Invitation, PART ONE, each Approved Vendor for fixed-rate Fuels will be required to use the Purchase Agreement form approved by the Cooperative (PART ONE, Attachment 1) to provide Fuel as a Selected Vendor to Cooperative members on a fixed-rate basis including all Fuel Pools created during the Panel Term. The Cooperative strongly believes that the use of standard agreements and resulting uniformity in terms facilitates efficient administration of the Program and benefits Cooperative members. Any award to Approved Vendors will be contingent on the Vendor's agreement to use the Purchase Agreement form approved by the Energy Cooperative. Carefully review Attachment 1 and confirm here that you will agree to the stated terms and to use such Purchase Agreement form in all transactions for fixed-fuel purchases by Cooperative members under the Fixed-Rate Fuel Program during the Panel Term. If you included any deviations or exceptions to the Purchase Agreement on form (which **must** be listed on the Deviation and Compliance form), please explain in detail your reasons for such deviations/exceptions.

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11. Provide any additional information on your company you believe demonstrates your company's qualifications and ability to provide quality Fuel service to Cooperative members through the Cooperative Fixed-Rate Program.

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## **REQUIRED FORMS CHECKLIST**

(Please check (√) the following)

- Reviewed/Completed: **Proposer's Acceptance and Agreement**

### **PROPOSAL FORMS SECTION 1: COMPLIANCE FORMS**

- Reviewed/Completed: **Proposal Acknowledgements**
- Reviewed/Completed: **Felony Conviction Disclosure**
- Reviewed/Completed: **Resident/Nonresident Certification**
- Reviewed/Completed: **Debarment Certification**
- Reviewed/Completed: **Vendor Employment Certification**
- Reviewed/Completed: **No Israel Boycott Certification**
- Reviewed/Completed: **No Excluded Nation or Foreign Terrorist Organization Certification**
- Reviewed/Completed: **Historically Underutilized Business Certification**
- Reviewed/Completed: **Deviation and Compliance**
- Reviewed/Completed: **Confidential/Proprietary Information**
- Reviewed/Completed: **EDGAR Vendor Certification**
- Reviewed/Completed: **Compliance Forms Signature Page**

### **PROPOSAL FORMS SECTION 2: VENDOR INFORMATION FORMS**

- Reviewed/Completed: **Vendor Business Name**
- Reviewed/Completed: **Vendor Contact Information**
- Reviewed/Completed: **Governmental References**
- Reviewed/Completed: **Freight Rates and Other Delivery Charges**
- Reviewed/Completed: **Texas Regional Service Designation**
- Reviewed/Completed: **State Service Designation**
- Reviewed/Completed: **National Purchasing Cooperative Vendor Award Agreement** *(Vendors serving outside Texas only)*
- Reviewed/Completed: **Service Location Listings**
- Reviewed/Completed: **Proposal Invitation Questionnaire**
- Reviewed/Completed: **Proposal Specifications – PART TWO, Rack Rate/Index-Priced Fuels**