

Meeting Date: 04/28/2015

Agenda Item 1

REQUESTED COMMISSION ACTION:

Consent Ordinance Resolution Consideration/Discussion Workshop

SHORT TITLE Approval to purchase maintenance, repair and operation equipment and supplies as needed from Lowes' Home Centers Inc. in the estimated annual amount of \$118,273 from budgeted funds in various departments, per the TCPN contract #R142104.

Summary of Purpose and Why:

The City purchases various items needed to maintain, repair and operate facilities from Lowe's per the TCPN Contract #R142104. The contract is valid through March 31, 2016 with contract renewal possible as stated in the RFP. Based on past usage, estimated annual expenditures for supply purchases City-wide may total \$118,273. City Commission approval of this contract award is requested.

- (1) Origin of request for this action: staff
- (2) Primary staff contact: Robert McCaughan, Public Works Director 954 786-4097
- (3) Expiration of contract, if applicable: see above
- (4) Fiscal impact and source of funding: as needed, from budgeted funds in various Departments

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Public Works	<u>4/15/15</u>	<u>APPROVE</u>	<u>Robert McCaughan</u>
General Services	<u>4/14/15</u>	<u>APPROVE</u>	<u>[Signature]</u>
Finance	<u>4/17/15</u>	<u>APPROVE</u>	<u>[Signature]</u>
Budget	<u>4-20-15</u>	<u>Approve</u>	<u>[Signature]</u>

City Manager [Signature] [Signature]

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration
<u>Workshop</u>		
1 st Reading	1 st Reading	Results: Results:
2 nd Reading		

MEMORANDUM

Purchasing #15-064
April 10, 2015

To: Dennis W. Beach, City Manager

Through: Otis J. Thomas, General Services Director *OT*

From: Cassandra LeMasurier, Purchasing Supervisor *cl*

Subject: Approval to Piggyback TCPN Contract R142104, Lowe's

City Commission approval is requested to purchase maintenance, repair and operation (MRO) equipment and supplies, as needed, from Lowe's Home Centers Inc., based upon "The Cooperative Purchasing Network" (TCPN) contract #R142104, which is valid through March 31, 2016 with contract renewal possible as stated in the RFP.

The agreement is based on a competitive RFP, and the City Code allows us to piggyback a contract of this type. The contract provides for a 5% discount for in-store purchases when the contract keyfob is presented at checkout, and a discount of 5% for online purchases ordered through LowesQuotes.com. Various City Departments purchase items from Lowe's including Public Works, Fire, Utilities, etc. Purchases are made, as needed, from budgeted funds in each department. Although all items purchased are small dollar value, the annual estimated total City-wide expenditure based on past activity is \$118,273.

Attached are copies of applicable pages from the TCPN contract.

enclosures

cc: file



Lowe's Home Centers, LLC.

VENDOR WEBSITE

Overview

Contract Documents

Contact

FAQ

Pricing

About

How To Order

Discount for TCPN Members

Lowe's offers TCPN member's everyday discounts to save your agency time and money.

As a participating member of The Cooperative Purchasing Network (TCPN), our exclusive program offers a walk-in and/or online solution with convenient and immediate savings.

Walk-in Benefits

Get a 5% discount at the point of sale on 40,000+ stock products at any one of our 1,700 locations nationwide when presenting your Lowe's TCPN contract card

Dedicated Commercial Sales Specialist to help you get the right products for every project

Bulk order discounts available on orders over \$2,500

Visit <http://www.lowesforpros.com/tcpn> to register for your walk-in discounts available through the TCPN contract.

Online Benefits

Get a 5% discount when you place your order online through your registered LowesQuotes.com account



February 27, 2015

Mr. Michael J. Horn
Vice President, ProServices
Lowe's Home Centers, LLC
1605 Curtis Bridge Road (A3ECS)
Chicago, Illinois 60631

Re: Award of TCPN Contract # R142104

Dear Mr. Horn:

Per official action taken by the Board of Directors of Region 4 Education Service Center, on February 24, 2015, The Cooperative Purchasing Network (TCPN) is pleased to announce that after approval of the exceptions as agreed upon in the terms and conditions, Lowe's Home Center, LLC has been awarded an annual contract for the following, based on the sealed proposal (RFP# 14-21) submitted on December 10, 2014:

Commodity/Service

Contractor

Maintenance, Repair & Operations (MRO)
Supplies and Related Services

Lowe's Home Center, LLC

The contract is effective April 1, 2015 and will expire on March 31, 2016. As indicated above, your TCPN Contract # is R142104. This contract may be renewed annually for an additional four (4) years if mutually agreed by Region 4 ESC/TCPN and Lowe's Home Center, LLC.

Your participation in the proposal process is appreciated and we look forward to a successful partnership. Please feel free to provide copies of this letter to your sales representative(s) to assist in their daily course of business.

If you have any questions, please feel free to contact Deborah Bushnell at 713.554.0460.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Wickel", is written over a horizontal line.

Jason Wickel
President



7145 West Tidwell Road ~ Houston, Texas 77092
(713) 744-6835
www.esc4.net

Publication Date: October 30, 2014

NOTICE TO OFFEROR

SUBMITTAL DEADLINE: Wednesday, December 10, 2014 @ 2:00 PM CST

Questions regarding this solicitation must be submitted in writing to Robert Zingelmann at questions@esc4.net or (713) 744-6835 no later than *December 3, 2014*. All questions and answers will be posted to both www.esc4.net and www.tcpn.org under Solicitations. Offerors are responsible for viewing either website to review all questions and answers prior to submitting proposals. Please note that oral communications concerning this RFP shall not be binding and shall in no way excuse the responsive Offeror of the obligations set forth in this proposal.

**Request for Proposal (RFP)
by**

Region 4 Education Service Center ("ESC")

for

Maintenance, Repair and Operations (MRO) Supplies & Related Services

On behalf of itself, other government agencies and non-profits, made available through The Cooperative Purchasing Network "TCPN."

Solicitation Number 14-21

Note: Envelopes must be sealed, prominently marked with the RFP solicitation number, RFP title, RFP opening time/date and name of vendor. Electronic submissions of the RFP will not be accepted. Submissions must be received by the Region 4 ESC office at: 7145 West Tidwell Road, Houston, TX 77092 no later than 2:00 pm CST, at which time the bid opening process shall commence. Proposals will be collected in a conference room to be determined by Region 4 ESC and opened and recorded publicly.

TABLE OF CONTENTS

A.	Introduction.....	p. 6
B.	Scope.....	p. 7
C.	Definitions.....	p. 7
D.	General Terms and Instructions to Offerors.....	p. 8
	• Evaluation Criteria.....	p. 12
E.	Appendix A: Vendor Contract Form.....	p. 15
	• Signature Page.....	p. 25
F.	Appendix B: Product/Services Specifications.....	p. 26
	• Special Terms & Conditions	
	• Specifications	
G.	Appendix C: Pricing.....	p. 28
H.	Appendix D: General Terms & Conditions Acceptance Form.....	p. 29
	• Vendor Orientation	
I.	Appendix E: Vendor Questionnaire.....	p. 31
J.	Appendix F: Company Profile.....	p. 35
	• References	
K.	Appendix G: Value Add.....	p. 40
L.	Appendix H: Additional Required Documents.....	p. 41
	• Clean Air and Water Act	
	• Debarment Notice	
	• Lobbying Certification	
	• Vendor/Contractor Requirements	
	1. Contractor's Employment Eligibility	
	2. Fingerprint & Background Checks	
	3. Business Operations in Sudan, Iran	
	• Antitrust Certification Statement	
	• Specific State Requirements	
M.	Appendix I: Evaluation Questionnaire/Self-Checklist.....	p. 58
N.	Appendix J: State Notice.....	p. 60

INTRODUCTION

I. Background on Region 4 Education Service Center

Region 4 Education Service Center ("Region 4 ESC" herein "Lead Public Agency") on behalf of itself and all state, local governments, school districts, and higher education institutions in the United States of America, and other government agencies and non-profit organizations (herein "Participating Agencies") solicits proposals from qualified Offerors to enter into a Vendor Contract ("contract") for the goods or services solicited in this proposal.

Contracts are approved and awarded by a single governmental entity, Region 4 ESC, and are only available for use and benefit of all entities complying with state procurement laws and regulations (public and private schools, colleges and universities, cities, counties, non-profits, and all governmental entities). These types of contracts are commonly referred to as being "piggybackable".

Region 4 ESC's purchasing cooperative was established in 1997 as a means to increase their economic and operational efficiency. The purchasing cooperative has since evolved into a National Cooperative used to assist other government and public entities increase their economical and operational efficiency when procuring goods and services.

II. What is the role of The Cooperative Purchasing Network ("TCPN")

The Cooperative Purchasing Network ("TCPN") assists Region 4 ESC in helping other public agencies and non-profits reap the benefits of national leveraged pricing, with no cost to the member. TCPN leverages one of the largest pools of purchasing potential. This is accomplished by competitively soliciting proposals and awarding contracts for commonly purchased products and services. Through the TCPN solicitation process, Region 4 ESC awards contracts covering Facilities, Furniture, Office Supplies & Equipment, Security Systems, and Technology and other goods and services industries.

III. Purpose of TCPN

- Provide governmental and public entities opportunities for greater efficiency and economy in procuring goods and services.
- Take advantage of state-of-the-art purchasing procedures to ensure the most competitive contracts.
- Provide competitive price and bulk purchasing for multiple government or public entities that yields economic benefits unobtainable by the individual entity.
- Provide quick and efficient delivery of goods and services.
- Equalize purchasing power for smaller agencies that are unable to command the best contracts for themselves.
- Help in assisting with use of best business practices.

IV. Customer Service

- TCPN is dedicated to making our contracts successful for both our members and our awarded vendors.
- TCPN is committed to providing our members and awarded vendors with high quality service.
- TCPN has dedicated staff available to answer questions, offer guidance and help in any way possible.

A. SCOPE

It is the intention of Region 4 ESC to establish a contract with vendor(s) for **Maintenance, Repair & Operations (MRO) Supplies & Related Services**. Awarded vendor(s) shall perform covered services under the terms of this agreement. Offerors shall provide pricing based on a discount from a manufacturer's price list or catalog, distributor published price, or fixed price, or a combination of both with indefinite quantities. Electronic Catalog and/or price lists must accompany the proposal. Include an electronic copy of the catalog from which discount, or fixed price, is calculated. Multiple percentage discount structure is also acceptable. Please specify where different percentage discounts apply. Additional pricing and/or discounts may be included. If Offeror has existing cooperative contracts in place, Offeror is requested to submit pricing equal or better than those in place.

Each service proposed is to be priced separately with all ineligible items identified. Services may be awarded to multiple vendors. Offerors may elect to limit their proposals to a single service within any category, or multiple services.

Region 4 ESC is seeking a service provider that has the depth, breadth and quality of resources necessary to complete all phases of this contract. In addition, TCPN also requests any value add commodity or service that could be provided under this contract.

While this solicitation specifically covers **Maintenance, Repair and Operations (MRO) Supplies**, respondents are encouraged to submit an offering on any and all products or services available that they currently perform in their normal course of business.

B. KEY DEFINITIONS

Days: means calendar days.

Lead agency: means the government entity advertising, soliciting, evaluating and awarding the contract. This definition also includes a public agency that meets the definition of a political subdivision, including a county, city, school district, state, public higher education or special district.

Lowest Pricing Available: means the overall lowest not-to-exceed price available for the specified goods or services at the time the vendor submits their proposal.

Procurement: means buying, purchasing, renting, leasing or otherwise acquiring any materials, services or construction. Procurement also includes all functions that pertain to the obtaining of any material, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.

Responsive Offeror: means a person, company, firm, corporation, partnership or other organization who submits a proposal which conforms in all material respects to the invitation for bids or request for proposals.

Solicitation: means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations or any other invitation or request by which we invite a person to participate in a procurement.

Specifications: means any description of physical or functional characteristics, or of the nature of a material, service or construction of item. Specifications may include a description or any requirement for inspecting, testing or preparing a material, service or construction item for delivery.

Vendor: means any provider or seller of goods and/or services that has a contractual relationship with Region 4 or TCPN.

C. GENERAL TERMS AND INSTRUCTIONS TO OFFERORS

- I. **Submission of Response:** Unless otherwise specified in the solicitation, all submitted proposals must contain one (1) bound and signed original copy of the solicitation, and two (2) electronic copies on CD, DVD or flash drives (i.e. pin or jump drives) shall be provided. Please see format requirements below. Vendor must also submit one (1) electronic proposal free of propriety information to be posted on Vendor information page if awarded a contract.

Only sealed responses will be accepted. Faxed or electronically transmitted responses will not be accepted. Sealed responses may be submitted on any or all items, unless stated otherwise. Proposal may be rejected for failure to comply with the requirements set forth in this proposal.

Deviations from any terms, conditions and/or specifications must be conspicuously noted in writing by the Offeror and shall be included with the response. (See Appendix D).

- II. **Proposal Format:** Responses must be provided in a three-ring binder or report cover using 8.5 x 11 paper clearly identified with the name of the Offeror's company and the solicitation name and number on both the outside front cover and vertical spine. All forms are to be completed electronically.

Include a copy of the entire RFP document that you are responding to, prior to your tabulated response. This means that all pages prior to the Appendixes must be included before Tab 1. Tabs should be used to separate the proposal into sections. The following items identified must be included behind the tabs listed below. Offerors failing to organize in the manner listed may be considered non-responsive and may not be evaluated.

III. **Binder Tabs:**

- Tab 1 – Entire Vendor Contract and Signature Form
 - General Terms and Conditions Acceptance Form (Appendix D)
- Tab 2 – Questionnaire (Appendix E)
- Tab 3 – Company Profile (Appendix F, excluding References section)
- Tab 4 – Evaluation Criteria Questionnaire (Appendix I)
- Tab 5 – Product / Services (Appendix B)
- Tab 6 – References (Appendix F)
- Tab 7 – Pricing (Appendix C)
- Tab 8 – Value Add (Appendix G)
- Tab 9 – Required Documents
 - Additional Required Documents (Appendix H)
 - Acknowledgement & Acceptance of Region 4 ESC Open Records Policy (Page 4).

- IV. **Mailing of Proposals:** All bids and proposals submitted in response to the solicitation must be clearly identified as listed below with the solicitation number, title, name and address of the company responding. All packages must be clearly identified as listed below, sealed and delivered to the Region 4 ESC office no later than the submittal deadline assigned for this solicitation.

From Bridgett Dedmond

Company Lowe's Home Centers, LLC

Address 1605 Curtis Bridge Road (A3ECS)

City, State, Zip Wilkesboro, NC 28697

Solicitation Name and Number 14-21 Due Date and Time Dec. 10, 2014 @ 2:00pm CST

Maintenance, Repair and Operations (MRO) Supplies & Related Services

- V. **Time for Receiving Proposals:** Proposals received prior to the submittal deadline will be time-stamped upon receipt and kept secure and unopened. At the submittal deadline, Region 4 will begin the process of opening all bids publicly by collecting all proposals received before the deadline in the room designated for the bid opening. No proposals received after the submittal time and deadline will be considered. Late proposals will be returned to sender unopened.

VI. **Inquiries and/or Discrepancies:** Questions regarding this solicitation must be submitted in writing to Robert Zingelmann at questions@esc4.net or (713) 744-6835 no later than *December 3, 2014*. All questions and answers will be posted to both www.esc4.net and www.tcpn.org under **Solicitations**. Offerors are responsible for viewing either website to review all questions and answers prior to submitting proposals. Please note that oral communications concerning this RFP shall not be binding and shall in no way excuse the responsive Offeror of the obligations set forth in this proposal.

VII. **Restricted and Prohibited Communications with Region 4 ESC:** During the period between the date Region 4 ESC issues this RFP and the selection of the vendor who is awarded a contract by Region 4 ESC, if any, Offerors shall restrict all contact with Region 4 ESC and direct all questions regarding this RFP, including questions regarding terms and conditions, only to the individual identified above in Section "Inquiries and/or Discrepancies" in the specified manner. **Do not contact members of the Board of Directors, other employees of Region 4 ESC or any of Region 4 ESC's agents or administrators. Contact with any of these prohibited individuals after issuance of this RFP and before selection is made, may result in disqualification of the Offeror.**

The communications prohibition shall terminate when the contract is recommended by the administration, considered by the Board of Directors at a noticed public meeting, and a contract has been awarded. In the event the Board of Directors refers the recommendation back to staff for reconsideration, the communications prohibition shall be re-imposed. Additionally, during the time period between the award by the Board of Directors and the execution of the contract, Offerors shall not engage in any prohibited communications as described in this section.

Prohibited communications includes direct contact, discussion, or promotion of any Offeror's response with any member of Region 4 ESC's Board of Directors or employees except for communications with Region 4 ESC's designated representative as set forth in this RFP and only in the course of inquiries, briefings, interviews, or presentations. This prohibition is intended to create a level playing field for all potential Offerors, assure that decisions are made in public, and to protect the integrity of the RFP process. Except as provided in the above stated exceptions, the following communications regarding a particular invitation for bids, requests for proposal, requests for qualifications, or other solicitation are prohibited:

- Communications between a potential vendor, service provider, bidder, offeror, lobbyist or consultant and any member of Region 4 ESC's Board of Directors;
- Communications between any director and any member of a selection or evaluation committee; and
- Communications between any director and administrator or employee.

The communications prohibition shall not apply to the following:

- Communications with Region 4 ESC's purchasing agent specifically named and authorized to conduct and receive such communications under this RFP or upon the request of Region 4 ESC, with Region 4 ESC's legal counsel; and
- Presentations made to the Board of Directors during any duly noticed public meeting.

Nothing contained herein shall prohibit any person or entity from publicly addressing Region 4 ESC's Board of Directors during any duly noticed public meeting, in accordance with applicable Board policies, on a matter other than this RFP or in connection with a presentation requested by Region 4 ESC's representatives.

VIII. **Calendar of Events (subject to change):**
Event

Date:

Issue RFP	October 30, 2014
Pre-proposal Conference	None
Deadline for receipt of questions via email	December 3, 2014
Issue Addendum/a (if required)	To Be Determined
Proposal Due Date	December 10, 2014
Approval from Region 4 ESC	February 24, 2015
Contract Effective Date	April 1, 2015

CONDITIONS OF SUBMITTING PROPOSALS

- IX. Amendment of Proposal:** A proposal may be amended up to the time of opening by submitting a sealed letter to the location indicated on the front page of this solicitation.
- X. Withdrawal of Proposals:** Withdrawal of proposals prior to the opening date will be permitted. Withdrawal of response will not be allowed for a period of 120 days following the opening. Pricing will remain firm for 120 days from submittal. However, consideration may be given in cases where Offeror advises that it made a clerical error that is substantially lower than it intended. In such case, Offeror must provide written notice of their desire to withdraw, along with supporting documents, within 3 business days of receiving the acceptance letter or of being requested by Region 4 ESC for clarification of the proposal, whichever is later. Any contracts entered into prior to Region 4 ESC receiving notice must be honored.
- No Offeror should assume that their withdrawal request has been accepted unless, and until, they receive written acknowledgment and acceptance of their proposal withdrawal.
- XI. Clarifications:** Offeror may receive a written request to clarify, in writing, its proposal in order to determine whether a proposal should be considered for award. The process of clarification is not an opportunity for an Offeror to revise or modify its proposal, and any response by an Offeror to a written request for clarification that attempts to revise or modify its proposal shall be given no effect. The purpose of the request for clarification will be solely made for the purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal, which may be corrected or waived in the leading agency's sole discretion.
- XII. Non-Responsive Proposals:** All proposals will be reviewed for responsiveness to the material requirements of the solicitation. A proposal that is not materially responsive shall not be eligible for further consideration for award of the contract, and the Offeror shall receive notice of the rejection of its proposal.
- XIII. Negotiations:** Region 4 ESC shall determine which responsive proposals are in the competitive range and/or are reasonably susceptible of being selected for award. Proposals not in the competitive range may not be further evaluated. Proposals in the competitive range shall be evaluated on the basis of price and the other evaluation criteria set forth in the solicitation. In the event that Region 4 ESC decides to conduct negotiations, notice shall be provided to each Offeror whose proposal is being considered for award, which notice may identify, in general terms, the elements or factors upon which Region 4 ESC intends to base its negotiations. Offerors will not be assisted, in any way, to bring their proposal up to the level of other proposals through discussions. During the course of negotiations, no Offeror's technical proposal or pricing shall be revealed to any other Offeror or to any other person who is not involved with the evaluation process. Region 4 ESC will also not indicate to Offeror a cost or price that it must meet to either obtain further consideration nor will it provide any information about other Offerors' proposals or prices.
- XIV. Best and Final Offer:** Region 4 ESC, in its sole discretion, may request all Offerors in the competitive range to submit a Best and Final Offer. Offerors must submit their Best and Final Offers in writing. If an Offeror does not respond to the request for a Best and Final Offer, that Offeror's most recent prior offer will be considered to be its Best and Final Offer.

- XV. **Specifications:** When a solicitation contains a specification that states no substitutions, no deviation from this requirement will be permitted. Offeror must comply with the true intent of the specifications and drawings and not take advantage of any unintentional error or omission. In cases where no type and kind of product is specified, specifications have been developed to indicate minimal standards as to the usage, materials, and contents based on the needs of the members.

References to manufacturer's specifications (Design Guides), when used by Region 4 ESC, are to be considered informative to give the Offeror information as to the general style, type and kind requested. Responses proposing goods, materials or equipment regularly produced by a reputable manufacturer shall be evaluated by Region 4 ESC which will, in its sole discretion, determine whether such proposed goods, materials or equipment are substantially equivalent to the Design Guides, considering quality, workmanship, economy of operation, and suitability for the purpose intended. Offerors should include all documentation required to evaluate whether or not their proposed goods, materials or equipment are substantially equivalent to the Design Guides.

- XVI. **Quality of Materials or Services:** Offeror shall state the brand name and number of the materials being provided. If none is indicated then it is understood that the offeror is quoting on the exact brand name and number specified or mentioned in the solicitation.

However, unless specifically stated otherwise, comparable substitutions will be permitted in cases where the material is equal to that specified, considering quality, workmanship, economy of operation and suitability for the purpose intended.

- XVII. **Samples:** Upon request, samples shall be furnished, free of cost, within seven (7) days after receiving notice of such request. By submitting the proposal Offeror certifies that all materials conform to all applicable requirements of this solicitation and of those required by law. Offeror agrees to bear the costs for laboratory testing, if results show that the sample does not comply with solicitation requirements.

Submissions may be rejected for failing to submit samples as requested.

- XVIII. **Deviations and Exceptions:** Deviations or exceptions stipulated in response may result in disqualification. It is the intent of Region 4 ESC to award a manufacturer's complete line of products, when possible.

- XIX. **Formation of Contract:** A response to this solicitation is an offer to contract with Region 4 ESC based upon the terms, conditions, scope of work, and specifications contained in this request. A solicitation does not become a contract until it is awarded by Region 4 ESC. A contract is formed when Region 4 ESC's board signs the Vendor Contract Signature Form. The prospective vendor must submit a signed Vendor Signature Form with the response thus, eliminating the need for a formal signing process.

- XX. **Estimated Quantities:** Region 4 ESC anticipates that a substantial number of participating members will enter into contracts resulting from this solicitation based on multiple surveys and usage of other contracts that may have included similar services, however, Region 4 ESC makes no guarantee or commitment of any kind concerning quantities or usage of contracts resulting from this solicitation. The volume for this contract is estimated to in excess of \$50 million a year. This information is provided solely as an aid to contract vendors in preparing proposals only. The successful Vendor(s) discount and pricing schedule shall apply regardless of the volume of business under the contract.

- XXI. **Multiple Awards:** membership includes a large number of potential entities which may utilize this contract throughout the nation. In order to assure that any ensuing contract(s) will allow Region 4 ESC to fulfill current and future needs, Region 4 ESC reserves the right to award contract(s) to multiple vendors. The decision to award multiple contracts, award only one contract, or to make no awards rests solely with Region 4 ESC.

XXII. **Non-Exclusive:** Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience and benefit of participating members. Region 4 ESC and participating entities reserve the right to obtain like goods and services from other sources.

AWARD PROCESS

XXIII. **Award or Rejection of Proposals:** In accordance with applicable laws, rules, and regulations for public purchasing, award(s) will be made to the prospective vendor whose response is determined to be the most advantageous to participating agencies, price and other factors considered. Region 4 ESC reserves the right to use a "Market Basket Survey" method, based on randomly selected criteria to determine the most advantageous response. To qualify for evaluation, a proposal must have been submitted on time, and satisfy all mandatory requirements identified in this solicitation. Proposals that are materially non-responsive will be rejected and the Offeror will be provided notice of such rejection.

XXIV. **Evaluation Process:** In evaluating the responses the following predetermined criteria is considered:

Products/Pricing (40 Points)

1. All products and services available
2. Pricing for all available products and services
3. Pricing for warranties on all products and services
4. Ability of Customers to verify that they received contract pricing
5. Payment methods
6. Other factors relevant to this section as submitted by the proposer

Performance Capability (30 Points)

1. Ability to deliver products and services nationally
2. Response to emergency orders
3. Ability to stock inventory locally for same day delivery and/or managed inventory solutions
4. Average on time delivery rate
5. Shipping charges
6. Return and restocking policy and applicable fees
7. History of meeting the shipping and delivery requirements
8. Ability to meet service and warranty needs of members
9. Customer service/problem resolution
10. Invoicing process
11. Contract implementation/Customer transition
12. Financial condition of vendor
13. Website ease of use, availability, and capabilities related to ordering, returns and reporting
14. Offeror's safety record
15. Instructional materials
16. Other factors relevant to this section as submitted by the proposer

Qualification and Experience (20 Points)

1. Offeror's reputation in the marketplace
2. Reputation of products and services in the marketplace
3. Past relationship with Region 4 ESC and/or TCPN members
4. Experience and qualification of key employees
5. Location and number of sales persons who will work on this contract
6. Past experience working with the government sector
7. Exhibited understanding of cooperative purchasing

8. Past litigation, bankruptcy, reorganization, state investigations of entity or current officers and directors
9. Minimum of 10 customer references relating to the products and services within this RFP
10. Other factors relevant to this section as submitted by the proposer

Value Add (10 Points)

1. Marketing plan and capability
2. Sales force training
3. Other factors relevant to this section as submitted by the proposer

XXV. Competitive Range: It may be necessary to establish a competitive range. Factors from the predetermined criteria will be used to make this determination. Responses not in the competitive range are unacceptable and do not receive further award consideration.

XXVI. Evaluation: A committee will review and evaluate all responses and make a recommendation for award of contract(s). The recommendation for contract awards will be based on the predetermined criteria factors outlined in this solicitation, where each factor is assigned a point value based on its importance.

XXVII. Past Performance: An Offeror's performance and actions under previously awarded contracts are relevant in determining whether or not the Offeror is likely to provide quality goods and services to TCPN members; including the administrative aspects of performance; the Offeror's history of reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the Offeror's businesslike concern for the interests of the customer.

OPEN RECORDS POLICY

XXVIII. Proprietary Information: Because contracts are awarded by a governmental entity, all responses submitted are subject to release as public information after contracts are executed. If an Offeror believes that its response, or parts of its response, may be exempted from disclosure, the Offeror must specify page-by-page and line-by-line the parts of the response, which it believes, are exempt. In addition, the Offeror must specify which exception(s) are applicable and provide detailed reasons to substantiate the exception(s). Offeror must provide this information on the "Acknowledge and Acceptance to Region 4 ESC's Open Record Policy" form found at the beginning of this solicitation. Any information that is unmarked will be considered public information and released, if requested under the Public Information Act.

The determination of whether information is confidential and not subject to disclosure is the duty of the Office of Attorney General (OAG). Region 4 ESC must provide the OAG sufficient information to render an opinion and therefore, vague and general claims to confidentiality by the Offeror are not acceptable. Region 4 ESC must comply with the opinions of the OAG. Region 4 ESC assumes no responsibility for asserting legal arguments on behalf of any Offeror. Offeror is advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

After completion of award, these documents will be available for public inspection.

PROTEST OF NON-AWARD

XXIX. Protest Procedure: Any protest of an award or proposed award must be filed in writing within ten (10) days from the date of the official award notification and must be received by 5:00 pm CDT. No protest shall lie for a claim that the selected Vendor is not a responsible Offeror. Protests shall be filed with Robert Zingelmann and sent to the Region 4 ESC office at: 7145 West Tidwell Road, Houston, TX 77092. Protests shall include the following:

1. Name, address and telephone number of protester

2. Original signature of protester or its representative
3. Identification of the solicitation by RFP number
4. Detailed statement of legal and factual grounds including copies of relevant documents; and the form of relief requested.
5. Any protest review and action shall be considered final with no further formalities being considered.

LIMITATION OF LIABILITY

XXX. Waiver: BY SUBMITTING A PROPOSAL, OFFER EXPRESSLY AGREES TO WAIVE ANY CLAIM IT HAS OR MAY HAVE AGAINST BOTH THE COOPERATIVE PURCHASING NETWORK AND REGION 4 EDUCATION SERVICE CENTER, ITS DIRECTORS, OFFICERS, ITS TRUSTEES, OR AGENTS ARISING OUT OF OR IN CONNECTION WITH (1) THE ADMINISTRATION, EVALUATION, RECOMMENDATION OF ANY PROPOSAL; (2) ANY REQUIREMENTS UNDER THE SOLICITATION, PROPOSAL PACKAGE, OR RELATED DOCUMENTS; (3) THE REJECTION OF ANY PROPOSAL OR ANY PART OF ANY PROPOSAL; AND/OR (4) THE AWARD OF A CONTRACT, IF ANY.

XXXI. NEITHER REGION 4 ESC NOR TCPN SHALL BE RESPONSIBLE OR LIABLE FOR ANY COSTS INCURRED BY PROPOSERS OR THE SELECTED VENDOR IN CONNECTION WITH RESPONDING TO THE RFP, PREPARING FOR ORAL PRESENTATIONS, PREPARING AND SUBMITTING A PROPOSAL, ENTERING OR NEGOTIATING THE TERMS OF A CONTRACT, OR ANY OTHER EXPENSES INCURRED BY A PROPOSER. THE PROPOSER OR SELECTED VENDOR IS WHOLLY RESPONSIBLE FOR ANY SUCH COSTS AND EXPENSES AND SHALL NOT BE REIMBURSED IN ANY MANNER BY REGION 4 ESC OR TCPN.

APPENDIX A
VENDOR CONTRACT AND SIGNATURE FORM

This Vendor Contract and Signature Form ("Contract") is made as of _____, by and between _____ ("Vendor") and Region 4 Education Service Center ("Region 4 ESC") for the purchase of _____ ("the products and services").

RECITALS

WHEREAS, both parties agree and understand that the following pages will constitute the contract between the successful vendor(s) and Region 4 ESC, having its principal place of business at 7145 West Tidwell Road, Houston, TX 77092.

WHEREAS, Vendor agrees to include, in writing, any required exceptions or deviations from these terms, conditions, and specifications; and it is further understood that, if agreed to by Region 4 ESC, said exceptions or deviations will be incorporated into the final contract "Vendor Contract."

WHEREAS, this contract consists of the provisions set forth below, including provisions of all attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any attachment, the provisions set forth below shall control.

WHEREAS, the Vendor Contract will provide that any state, county, special district, local government, school district, private K-12 school, technical or vocational school, higher education institution (including community colleges, colleges and universities, both public and private), other government agencies or non-profit organization may purchase products and services at prices indicated in the Vendor Contract upon registering and becoming a member with TCPN; and it being further understood that Region 4 ESC shall act as the Lead Public Agency with respect to all such purchase agreements.

WHEREAS, TCPN has the administrative and legal capacity to administer purchases on behalf of Region 4 ESC under the Vendor Contract with participating public agencies and entities, as permitted by applicable law.

ARTICLE 1- GENERAL TERMS AND CONDITIONS

- 1.1 TCPN shall be afforded all of the rights, privileges and indemnifications afforded to Region 4 ESC under the Vendor Contract, and such rights, privileges and indemnifications shall accrue and apply with equal effect to TCPN, including, without limitation, Vendors obligation to provide insurance and other indemnifications to Lead Public Agency.
- 1.2 Awarded vendor shall perform all duties, responsibilities and obligations, set forth in this agreement, and required under the Vendor Contract.
- 1.3 TCPN shall perform its duties, responsibilities and obligations as administrator of purchases, set forth in this agreement, and required under the Vendor Contract.

1.4 **Purchasing procedure:**

- Purchase orders are issued by participating governmental agencies to the awarded vendor indicating on the PO "Per TCPN Contract # R_____."
- Vendor delivers goods/services directly to the participating agency.
- Awarded vendor invoices the participating agency directly.
- Awarded vendor receives payment directly from the participating agency.
- Awarded vendor reports sales monthly to TCPN.

1.5 **Customer Support:** The vendor shall provide timely and accurate technical advice and sales support to Region 4 ESC staff, TCPN staff and participating agencies. The vendor shall respond to such requests within one (1) working day after receipt of the request.

ARTICLE 2- ANTICIPATED TERM OF AGREEMENT

2.1 Unless otherwise stated, all contracts are for a period of three (3) years with an option to renew annually for an additional two (2) years if agreed to by Region 4 ESC. Region 4 ESC will notify the vendor in writing if the contract is extended. Awarded vendor shall honor all administrative fees for any sales made based under the contract whether renewed or not.

2.2 Region 4 ESC shall review the contract prior to the renewal date and notify the current awarded vendor, no less than ninety (90) days of Region 4 ESC's intent renew the contract. Upon receipt of notice, awarded vendor must notify Region 4 ESC if it elects not to renew. Awarded vendor shall honor the administrative fee for any sales incurred throughout the life of the contract on any sales made based on a Region 4 ESC contract whether awarded a renewal or not. Region 4 ESC reserves the right to exercise each two-year extension annually.

ARTICLE 3- REPRESENTATIONS AND COVENANTS

3.1. **Scope:** This contract is based on the need to provide the economic benefits of volume purchasing and reduction in administrative costs through cooperative purchasing to schools and other members. Although contractors may restrict sales to certain public units (for example, state agencies or local government units), any contract that prohibits sales from being made to public school districts may not be considered. Sales without restriction to any Members are preferred. These types of contracts are commonly referred to as being "piggybackable".

3.2. **Compliance:** Cooperative Purchasing Agreements between TCPN and its Members have been established under state procurement law.

3.3. **Offeror's Promise:** Offeror agrees all prices, terms, warranties, and benefits granted by Offeror to Members through this contract are comparable to or better than the equivalent terms offered by Offeror to any present customer meeting the same qualifications or requirements.

ARTICLE 4- FORMATION OF CONTRACT

4.1. **Offeror Contract Documents:** Region 4 ESC will review proposed offeror contract documents. Vendor's contract document shall not become part of Region 4 ESC's contract with vendor unless and until an authorized representative of Region 4 ESC reviews and approves it.

4.2. **Form of Contract:** The form of contract for this solicitation shall be the Request for Proposal, the awarded proposal(s) and best and final offer(s), and properly issued and reviewed purchase orders referencing the requirements of the Request for Proposals. If a firm submitting an offer requires Region 4 ESC and/or Member to sign an additional agreement, a copy of the proposed agreement must be included with the proposal.

- 4.3. **Entire Agreement (Parol evidence)**: The contract, as specified above, represents the final written expression of agreement. All agreements are contained herein and no other agreements or representations that materially alter it are acceptable.
- 4.4. **Assignment of Contract**: No assignment of contract may be made without the prior written approval of Region 4 ESC. Purchase orders and payment can only be made to awarded vendor unless otherwise approved by Region 4 ESC. Awarded vendor is required to notify Region 4 ESC when any material change in operations is made that may adversely affect members (i.e. bankruptcy, change of ownership, merger, etc.).
- 4.5. **Novation**: If contractor sells or transfers all assets or the entire portion of the assets used to perform this contract, a successor in interest must guarantee to perform all obligations under this contract. Region 4 ESC reserves the right to accept or reject any new party. A simple change of name agreement will not change the contractual obligations of contractor.
- 4.6. **Contract Alterations**: No alterations to the terms of this contract shall be valid or binding unless authorized and signed by a Region 4 ESC staff member.
- 4.7. **Order of Precedence**: In the event of a conflict in the provisions of the contract as accepted by Region 4 ESC, the following order of precedence shall prevail:
- Special terms and conditions
 - General terms and conditions
 - Specifications and scope of work
 - Attachments and exhibits
 - Documents referenced or included in the solicitation
- 4.8. **Supplemental Agreements**: The entity participating in the Region 4 ESC contract and awarded vendor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement developed as a result of this contract is exclusively between the participating entity and awarded vendor. Neither Region 4 ESC, TCPN, its agents, members and employees shall be made party to any claim for breach of such agreement.
- 4.9. **Adding authorized distributors/dealers**: Awarded vendors are prohibited from authorizing additional distributors or dealers, other than those identified at the time of submitting their proposal, to sell under their contract award without notification and prior written approval from TCPN. Awarded vendors must notify TCPN each time it wishes to add an authorized distributor or dealer. Purchase orders and payment can only be made to awarded vendor unless otherwise approved by TCPN. Pricing provided to members by added distributors or dealers must also be less than or equal to the pricing offered by the awarded contract holder, unless otherwise approved by TCPN.

ARTICLE 5- TERMINATION OF CONTRACT

- 5.1. **Cancellation for Non-Performance or Contractor Deficiency**: Region 4 ESC may terminate any contract if Members have not used the contract, or if purchase volume is determined to be low volume in any 12-month period. Region 4 ESC reserves the right to cancel the whole or any part of this contract due to failure by contractor to carry out any obligation, term or condition of the contract. Region 4 ESC may issue a written deficiency notice to contractor for acting or failing to act in any of the following:
- i. Providing material that does not meet the specifications of the contract;
 - ii. Providing work and/or material that was not awarded under the contract;
 - iii. Failing to adequately perform the services set forth in the scope of work and specifications;
 - iv. Failing to complete required work or furnish required materials within a reasonable amount of time;

- v. Failing to make progress in performance of the contract and/or giving Region 4 ESC reason to believe that contractor will not or cannot perform the requirements of the contract; and/or
- vi. Performing work or providing services under the contract prior to receiving a Region 4 ESC reviewed purchase order for such work.

Upon receipt of a written deficiency notice, contractor shall have ten (10) days to provide a satisfactory response to Region 4 ESC. Failure to adequately address all issues of concern may result in contract cancellation. Upon cancellation under this paragraph, all goods, materials, work, documents, data and reports prepared by contractor under the contract shall become the property of the Member on demand.

5.2 **Termination for Cause:** If, for any reason, the Vendor fails to fulfill its obligation in a timely manner, or if the vendor violates any of the covenants, agreements, or stipulations of this contract Region 4 ESC reserves the right to terminate the contract immediately and pursue all other applicable remedies afforded by law. Such termination shall be effective by delivery of notice, to the vendor, specifying the effective date of termination. In such event, all documents, data, studies, surveys, drawings, maps, models and reports prepared by vendor for this solicitation may become the property of the participating agency or entity. If such event does occur then vendor will be entitled to receive just and equitable compensation for the satisfactory work completed on such documents.

5.3 **Delivery/Service Failures:** Failure to deliver goods or services within the time specified, or within a reasonable time period as interpreted by the purchasing agent or failure to make replacements or corrections of rejected articles/services when so requested shall constitute grounds for the contract to be terminated. In the event that the participating agency or entity must purchase in an open market, contractor agrees to reimburse the participating agency or entity, within a reasonable time period, for all expenses incurred.

5.4 **Force Majeure:** If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority; insurrections; riots; epidemics; landslides; lighting; earthquake; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

5.5 **Standard Cancellation:** Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 business days after the other party receives the notice of cancellation. After the 30th business day all work will cease following completion of final purchase order. Vendor may be requested to provide additional items not already on contract at any time.

ARTICLE 6- LICENSES

- 6.1 **Duty to keep current license:** Vendor shall maintain in current status all federal, state and local licenses, bonds and permits required for the operation of the business conducted by vendor. Vendor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of services under the contract. Region 4 ESC reserves the right to stop work and/or cancel the contract of any vendor whose license(s) expire, lapse, are suspended or terminated.
- 6.2 **Survival Clause:** All applicable software license agreements, warranties or service agreements that were entered into between Vendor and Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Order Fulfiller shall survive expiration or termination of the Contract.

ARTICLE 7- DELIVERY PROVISIONS

- 7.1 **Delivery:** Vendor shall deliver said materials purchased on this contract to the Member issuing a Purchase Order. Conforming product shall be shipped within 7 days of receipt of Purchase Order. If delivery is not or cannot be made within this time period the vendor must receive authorization from the purchasing agency for the delayed delivery. At this point the participating entity may cancel the order if estimated shipping time is not acceptable.
- 7.2 **Inspection & Acceptance:** If defective or incorrect material is delivered, purchasing agency may make the determination to return the material to the vendor at no cost to the purchasing agency. The vendor agrees to pay all shipping costs for the return shipment. Vendor shall be responsible for arranging the return of the defective or incorrect material.

ARTICLE 8- BILLING AND REPORTING

- 8.1 **Payments:** The entity using the contract will make payments directly to the awarded vendor. Payment shall be made after satisfactory performance, in accordance with all provisions thereof, and upon receipt of a properly completed invoice.
- 8.2 **Invoices:** The awarded vendor shall submit invoices to the participating entity clearly stating "Per TCPN Contract". The shipment tracking number or pertinent information for verification shall be made available upon request.
- 8.3 **Tax Exempt Status:** Since this is a national contract, knowing the tax laws in each state is the sole responsibility of the vendor.
- 8.4 **Reporting:** The awarded vendor shall electronically provide TCPN with a detailed monthly report showing the dollar volume of all sales under the contract for the previous month. Reports shall be sent via e-mail to TCPN offices at reporting@tcpn.org. Reports are due on the **fifteenth (15th)** day after the close of the previous month. It is the responsibility of the awarded vendor to collect and compile all sales under the contract from participating Members and submit one (1) report. The report shall include at least the following information listed below:

- Vendor Name
- TCPN Contract Number
- Reporting Period/Year
- Entity Name
- Entity Address (Including Street, City, State & Zip)

- Entity Purchase Order Number (Individual Purchase Order Numbers)
- Purchase Order Date
- Gross Sale Amount
- Administrative Fee (Based on Gross Sale Amount)

ARTICLE 9- PRICING

9.1 **Best price guarantee:** The awarded vendor agrees to provide pricing to Region 4 ESC and its participating entities that are the lowest pricing available and the pricing shall remain so throughout the duration of the contract. Pricing offered to Federal government buying consortiums for goods and services is exempt from this requirement. The awarded vendor, however, agrees to lower the cost of any product purchased through TCPN following a reduction in the manufacturer or publisher's direct cost.

9.2 **Price increase:** Should it become necessary or proper during the term of this contract to make any change in design or any alterations that will increase expense Region 4 ESC must be notified immediately. Price increases must be approved by Region 4 ESC and no payment for additional materials or services, beyond the amount stipulated in the contract, shall be paid without prior approval. All price increases must be supported by manufacture documentation, or a formal cost justification letter.

Awarded vendor must honor previous prices for thirty (30) days after approval and written notification from Region 4 ESC if requested.

It is the awarded vendor's responsibility to keep all pricing up to date and on file with Region 4 ESC. All price changes must be provided to Region 4 ESC, using the same format as was accepted in the original contract.

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

9.4 **Price reduction and adjustment:** Price reduction may be offered at any time during contract and shall become effective upon notice of acceptance from Region 4 ESC. Special, time-limited reductions are permissible under the following conditions: 1) reduction is available to all Members equally; 2) reduction is for a specific time period, normally not less than thirty (30) days; 3) original price is not exceeded after the time-limit; and 4) Region 4 ESC has approved the new prices prior to any offer of the prices to a Member. Vendor shall offer Region 4 ESC any published price reduction during the contract period.

9.5 **Prevailing Wage:** It shall be the responsibility of the Vendor to comply, when applicable, with the prevailing wage legislation in effect in the jurisdiction of the purchaser (Region 4 ESC or its Members). It shall further be the responsibility of the Vendor to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of this contract and adjust wage rates accordingly.

- **Administrative Fees:** All pricing submitted to Region 4 ESC shall include the administrative fee to be remitted to TCPN by the awarded vendor.

The awarded vendor agrees to pay administrative fees to TCPN as calculated as follows: (Sales will be calculated for fiscal year of January 1st through December 31st and reset each year)

<u>Annual Sales Through Contract</u>	<u>Administrative Fee</u>
0 - \$50,000,000	2%
\$50,000,001 - \$100,000,000	1.75%
\$100,000,001 - \$150,000,000	1.5%
\$150,000,001 - \$200,000,000	1.25%
\$200,000,001 - \$500,000,000	1%
\$500,000,001 - \$1,000,000,000	0.75%
\$1,000,000,000+	0.5%

ARTICLE 10- PRICING AUDIT

10.1 **Audit rights:** Vendor shall, at Vendor's sole expense, maintain appropriate due diligence of all purchases made by Region 4 ESC and any entity that utilizes this Agreement. TCPN and Region 4 ESC each reserve the right to audit the accounting for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective date of termination. In the State of New Jersey, this audit right shall survive termination of this Agreement for a period of five (5) years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request. Region 4 ESC shall have the authority to conduct random audits of Vendor's pricing that is offered to eligible entities at Region 4 ESC's sole cost and expense. Notwithstanding the foregoing, in the event that Region 4 ESC is made aware of any pricing being offered to eligible agencies that is materially inconsistent with the pricing under this agreement, Region 4 ESC shall have the ability to conduct an extensive audit of Vendor's pricing at Vendor's sole cost and expense. Region 4 ESC may conduct the audit internally or may engage a third-party auditing firm. In the event of an audit, the requested materials shall be provided in the format and at the location designated by Region 4 ESC or TCPN.

ARTICLE 11- OFFEROR PRODUCT LINE REQUIREMENTS

- 11.1 **Current products:** Proposals shall be for materials and equipment in current production and marketed to the general public and education/government agencies at the time the proposal is submitted.
- 11.2 **Discontinued products:** If a product or model is discontinued by the manufacturer, vendor may substitute a new product or model if the replacement product meets or exceeds the specifications and performance of the discontinued model and if the discount is the same or greater than the discontinued model.
- 11.3 **New products/Services:** New products and/or services that meet the scope of work may be added to the contract. Pricing shall be equivalent to the percentage discount for other products. Vendor may replace or add product lines to an existing contract if the line is replacing or supplementing products on contract, is equal or superior to the original products offered, is discounted in a similar or to a greater degree, and if the products meet the requirements of the solicitation. No products and/or services may be added to avoid competitive procurement requirements. Region 4 ESC may require additions to be submitted with documentation from Members demonstrating an interest in, or a potential requirement for, the new product or service. Region 4 ESC may reject any additions without cause.

- 11.4 **Options:** Optional equipment for products under contract may be added to the contract at the time they become available under the following conditions: 1) the option is priced at a discount similar to other options; 2) the option is an enhancement to the unit that improves performance or reliability.
- 11.5 **Product line:** Offerors with a published catalog may submit the entire catalog. Region 4 ESC reserves the right to select products within the catalog for award without having to award all contents. Region 4 ESC may reject any addition of equipment options without cause.
- 11.6 **Warranty conditions:** All supplies, equipment and services shall include manufacturer's minimum standard warranty and one (1) year labor warranty unless otherwise agreed to in writing.
- 11.7 **Buy American requirement:** (for New Jersey and all other applicable States) Vendors may only use unmanufactured construction material mined or produced in the United States, as required by the Buy American Act. Where trade agreements apply, to the extent permitted by applicable law, then unmanufactured construction material mined or produced in a designated country may also be used. Vendors are required to check state specific requirements to ensure compliance with this requirement.

ARTICLE 12- SITE REQUIREMENTS

- 12.1 **Cleanup:** Vendor shall clean up and remove all debris and rubbish resulting from their work as required or directed by Member. Upon completion of the work, the premises shall be left in good repair and an orderly, neat, clean and unobstructed condition.
- 12.2 **Preparation:** Vendor shall not begin a project for which Member has not prepared the site, unless vendor does the preparation work at no cost, or until Member includes the cost of site preparation in a purchase order. Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.
- 12.3 **Registered sex offender restrictions:** For work to be performed at schools, vendor agrees that no employee or employee of a subcontractor who has been adjudicated to be a registered sex offender will perform work at any time when students are or are reasonably expected to be present. Vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the Member's discretion. Vendor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge.
- 12.4 **Safety measures:** Vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Vendor shall post warning signs against all hazards created by its operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.
- 12.5 **Smoking:** Persons working under the contract shall adhere to local smoking policies. Smoking will only be permitted in posted areas or off premises.
- 12.6 **Stored materials:** Upon prior written agreement between the vendor and Member, payment may be made for materials not incorporated in the work but delivered and suitably stored at the site or some other location, for installation at a later date. An inventory of the stored materials must be provided to Member prior to payment. Such materials must be stored and protected in a secure location, and be insured for their full value by the vendor against loss and damage. Vendor agrees to provide proof of coverage and/or addition of Member as an additional insured upon Member's request. Additionally, if stored offsite, the materials must also be clearly identified as property of buying Member and be separated from other materials. Member must be allowed reasonable opportunity to inspect and take inventory of stored materials, on or offsite, as necessary.

Until final acceptance by the Member, it shall be the Vendor's responsibility to protect all materials and equipment. The Vendor warrants and guarantees that title for all work, materials and equipment shall pass to the Member upon final acceptance.

ARTICLE 13- MISCELLANEOUS

- 13.1 **Funding Out Clause:** Any/all contracts exceeding one (1) year shall include a standard "funding out" clause. A contract for the acquisition, including lease, of real or personal property is a commitment of the entity's current revenue only, provided the contract contains either or both of the following provisions:

"Retains to the entity the continuing right to terminate the contract at the expiration of each budget period during the term of the contract and is conditioned on a best efforts attempt by the entity to obtain appropriate funds for payment of the contract."

- 13.2 **Disclosures:** Offeror affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this contract.

Include a complete description of any and all relationships that might be considered a conflict of interest in doing business with participants in TCPN.

The Offeror affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this contract.

- 13.3 **Indemnity:** The awarded vendor shall protect, indemnify, and hold harmless both Region 4 ESC and TCPN and its participants, administrators, employees and agents against all claims, damages, losses and expenses arising out of or resulting from the actions of the vendor, vendor employees or vendor subcontractors in the preparation of the solicitation and the later execution of the contract, including any supplemental agreements with members. Any litigation involving either Region 4 ESC or TCPN, its administrators and employees and agents will be in Harris County, Texas. Any litigation involving TCPN members shall be in the jurisdiction of the participating agency.

- 13.4 **Franchise Tax:** The Offeror hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes.

- 13.5 **Marketing:** Awarded vendor agrees to allow Region 4 ESC to use their name and logo within website, marketing materials and advertisement. Any use of Region 4 ESC name and logo or any form of publicity, inclusive of press releases, regarding this contract by awarded vendor must have prior approval from Region 4 ESC.

- 13.6 **Certificates of Insurance:** Certificates of insurance shall be delivered to the Region 4 ESC participant prior to commencement of work. The insurance company shall be licensed in the applicable state in which work is being conducted. The awarded vendor shall give the participating entity a minimum of ten (10) days notice prior to any modifications or cancellation of policies. The awarded vendor shall require all subcontractors performing any work to maintain coverage as specified.

- 13.7 **Legal Obligations:** It is the Offeror's responsibility to be aware of and comply with all local, state, and federal laws governing the sale of products/services identified in this RFP and any awarded contract and shall comply with all while fulfilling the RFP. Applicable laws and regulation must be followed even if not specifically identified herein.

- 13.8 **Open Records Policy:** Because Region 4 ESC contracts are awarded by a governmental entity, responses submitted are subject to release as public information after contracts are executed. If a vendor believes that its response, or parts of its response, may be exempted from disclosure, the vendor must specify page-by-page and line-by-line the parts of the response, which it believes, are exempt. In addition, the Offeror must specify which exception(s) are applicable and provide detailed

reasons to substantiate the exception(s). Offeror must provide this information on the "Acknowledgement and Acceptance to Region 4 ESC's Open Record Policy" form found at the beginning of this solicitation. Any information that is unmarked will be considered public information and released, if requested under the Public Information Act.

The determination of whether information is confidential and not subject to disclosure is the duty of the Office of Attorney General (OAG). Region 4 ESC must provide the OAG sufficient information to render an opinion and therefore, vague and general claims to confidentiality by the Offeror are not acceptable. Region 4 ESC must comply with the opinions of the OAG. Region 4 ESC assumes no responsibility for asserting legal arguments on behalf of any vendor. Offeror are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

After completion of award, these documents will be available for public inspection.

[Remainder of Page Intentionally Left Blank – Signatures follow on Signature Form]

VENDOR CONTRACT SIGNATURE FORM

The undersigned hereby proposes and agrees to furnish goods and/or services in strict compliance with the terms, specifications and conditions at the prices proposed within response unless noted in writing. The undersigned further certifies that he/she is an officer of the company and has authority to negotiate and bind the company named below and has not prepared this proposal in collusion with any other Respondent and that the contents of this proposal as to prices, terms or conditions of said proposal have not been communicated by the undersigned nor by any employee or agent to any person engaged in this type of business prior to the official opening of this proposal.

Prices are guaranteed: 120 days

Company name Lowe's Home Centers, LLC

Address 1605 Curtis Bridge Road (A3ECS)

City/State/Zip Wilkesboro, NC 28697

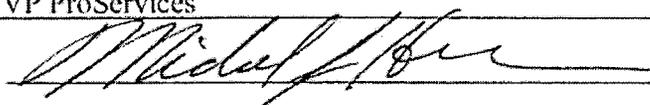
Telephone No. 1-888-310-7791

Fax No. 1-877-793-8455

Email address GovMilAccounts@lowes.com

Printed name Michael J. Horn

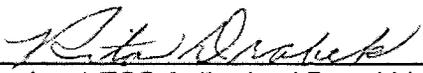
Position with company VP ProServices

Authorized signature 

Accepted by The Cooperative Purchasing Network:

Term of contract April 1, 2015 to March 31, 2016

Unless otherwise stated, all contracts are for a period of one (1) year with an option to renew annually for an additional Four (4) years if agreed to by Region 4 ESC and the awarded vendor. Awarded vendor shall honor all administrative fees for any sales made based on a contract whether renewed or not.


Region 4 ESC Authorized Board Member

2-24-2015
Date

Rita Drabek
Print Name


Region 4 ESC Authorized Board Member

2-24-2015
Date

Faye B. Bryant
Print Name

TCPN Contract Number R142104

Appendix B:

PRODUCT / SERVICES SPECIFICATIONS

It is the intention of Region 4 ESC to establish an annual contract with highly qualified Vendor(s) for **Maintenance, Repair and Operations (MRO) Supplies & Related Services** on a national level. Vendor(s) shall, at the request of Region 4 ESC and/or TCPN members, provide these covered products and associated services under the terms of this RFP and the CONTRACT TERMS AND CONDITIONS.

The scope of this RFP shall include but not limited to the following Product Categories:

- Adhesives, Sealants & Tape
- Air Filters
- Appliances
- Building Materials
- Cabinets, Countertops & Related Materials
- Electrical Supplies & Equipment
- Fasteners, Hardware, Hand Tools
- General Maintenance Supplies
- HVAC Supplies
- Ice Machines & Refrigeration
- Irrigation Equipment & Supplies
- Janitorial Supplies
- Landscaping Supplies
- Lighting, Ballasts, and Bulbs
- Material Handling & Storage Supplies
- Motors, Pumps
- Outdoor Garden Supplies & Equipment
- Paint, Equipment & Supplies
- Plumbing Supplies
- Pneumatic Tools
- Power Tools & Accessories
- Raw Materials
- Safety & Security Related Items
- Swimming Pool Chemicals
- Tools (general purpose & machine)
- Window Treatments
- Services (installation, glass cutting, rental, etc)
- Welding & Soldering

Supplies

Respondents are encouraged to offer everything in their entire catalogue that falls within the scope of MRO Supplies. Region 4 ESC reserves the right to reject parts of offerings that it deems to fall outside the scope of the RFP. All products offered shall be new, unused and of the latest design and technology.

Related Services

Respondents should submit auditable pricing for any and all services offered as indicated in Appendix C of this RFP

Appendix B:
PRODUCT / SERVICES SPECIFICATIONS

It is the intention of Region 4 ESC to establish an annual contract with highly qualified Vendor(s) for **Maintenance, Repair and Operations (MRO) Supplies & Related Services** on a national level. Vendor(s) shall, at the request of Region 4 ESC and/or TCPN members, provide these covered products and associated services under the terms of this RFP and the CONTRACT TERMS AND CONDITIONS.

The scope of this RFP shall include but not limited to the following Product Categories:

- Adhesives, Sealants & Tape
- Air Filters
- Appliances
- Building Materials
- Cabinets, Countertops & Related Materials
- Electrical Supplies & Equipment
- Fasteners, Hardware, Hand Tools
- General Maintenance Supplies
- HVAC Supplies
- Ice Machines & Refrigeration
- Irrigation Equipment & Supplies
- Janitorial Supplies
- Landscaping Supplies
- Lighting, Ballasts, and Bulbs
- Material Handling & Storage Supplies
- Motors, Pumps
- Outdoor Garden Supplies & Equipment
- Paint, Equipment & Supplies
- Plumbing Supplies
- Pneumatic Tools
- Power Tools & Accessories
- Raw Materials
- Safety & Security Related Items
- Swimming Pool Chemicals
- Tools (general purpose & machine)
- Window Treatments
- Services (installation, glass cutting, rental, etc)
- Welding & Soldering

Supplies

Respondents are encouraged to offer everything in their entire catalogue that falls within the scope of MRO Supplies. Region 4 ESC reserves the right to reject parts of offerings that it deems to fall outside the scope of the RFP. All products offered shall be new, unused and of the latest design and technology.

Related Services

Respondents should submit auditable pricing for any and all services offered as indicated in Appendix C of this RFP



1605 Curtis Bridge Rd.
Mail Code: A3ECS
Wilkesboro, NC 28697
Phone: 888-310-7791
Fax: 877-793-8455

7. Provide the number of retail stores/storefront locations that your organization has, broken down by State:

Agencies are able to view Lowe's retail stores/storefront locations by visiting the following website:
www.lowes.com/storelocator

8. Describe how your organization will ensure agencies receive the Region 4 ESC contract pricing in retail stores/storefront locations:

Lowe's offers TCPN member's everyday discounts to save your agency time and money. As a participating member of The Cooperative Purchasing Network (TCPN), our exclusive program offers a walk-in and/or online solutions and coming soon – level 2 punch out with convenient and immediate savings.

Walk-in Benefits

- Receive a 5% discount at time of purchase on 40,000+ stock products plus special order items at any one of our 1,700 locations nationwide when presenting your Lowe's TCPN contract savings card
- Dedicated ProServices Sales Specialist to help you get the right products for every project

Online Benefits

- Receive up to 20% discount when you place your order online through your registered www.LowesQuotes.com account
- Discount does not apply to orders placed on Lowes.com, only orders placed on www.LowesQuotes.com with the correct TCPN login information

How to Register - Online

- Please go to www.LowesQuotes.com
- Click "Go National"
- Type in TCPN ID: MuHMEp6BAoFv (Note: this ID is case sensitive)

Click Submit After submitting your request on Lowesquotes.com you will be sent an email with a temporary password. If you don't receive the email in a timely manner, please check your 'Spam' and/or 'Junk' folders as it may not have made it past any filters on your server.

How to Purchase using the Online solution

Once you are registered to use our online solution, you may start purchasing right away.

- Please go to www.LowesQuotes.com
- Type in Username and Password
- Click Submit

At this point you will be able to submit a quote or place an order



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To request a quote

- Click "request a quote"
- Type in zip code
- Select store
- Type in Item Number (you may use search field if you do not know the item number or key in the item numbers in the order form)
- Once all item numbers are submitted – Click Continue
- Complete Quote Profile Information
- To save quote – Click "Review and Save Quote"

To pull up a saved quote, you will need to be on the LQC Home page

- Click "My quotes" located in the center of the page
- Click "Saved quotes"
- Click on the desired quote
- When you are ready to submit the order to the store, click "Order Quote"

To submit an order

- Click "Submit an Order"
- Type in zip code
- Select store
- Type in Item Number (you may use search field if you do not know the item number or key in the item numbers in the order form)
- Once all item numbers are submitted – Click Continue
- Complete Order Profile Information
- Click Review Order
- Click Submit Oder

How to Register – Walk-in

Please go to www.lowesforpros.com/tcpn

- Complete the TCPN Contract Savings Card registration (starts at the Federal ID field)
- Click Submit

Note: You will not receive a confirmation on the order, please print the registration form with statement of confirmation for your records.

Note: Please allow 2-3 weeks for delivery of Contract Savings Cards.

How to Purchase – Walk-in

Lowe's walk-in solution was created for a fast convenient way for customers to use our TCPN contract. TCPN contract savings card will need to be ordered and received prior to making purchases.

- Simply walk into the store and purchase as you normally would
- At check out, hand cashier your TCPN contract savings card to be scanned
- When the barcode is scanned, your purchase will be contract compliant and you will receive a 5% TCPN contract discount off the Lowe's Everyday Low Price (EDLP)
- To stay compliant with the contract, the contract savings card barcode **must** be scanned on **all** purchases or barcode number can be entered by the cashier if included on the PO.



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Lowe's Punch Out

In 2015, Lowe's will allow for Level 2 punch-out as a purchase vehicle through Lowesforpros.com and will be made available to TCPN members. Lowe's level of expertise with web-based procurement providers is advanced. Lowe's is currently integrating with both a hosted and punch-out catalog and providing electronic invoicing via EDI or CXML. More details to come.

9. Detail any rebates, custom core lists, or other incentive offers, that will be extended through the contract:

- a. Agencies that elect to use a Lowe's Account Receivable (LAR) as a form of payment will have the option to sign up for our 2% prompt pay. Each agency will need to register their LAR account to receive this discount. LAR 2% prompt pay will be reflected on the registered accounts statement after two billing cycles from the first on time payment is made. To continue to receive the 2% discount, the agency will need to ensure that payment is made on time each month or the discount will not apply. Please visit <http://www.lowesforpros.com/specialprograms> to sign-up for the 2% prompt pay discount.
- b. Lowe's agrees to allow agencies to request purchases over \$2,500 to be submitted into Lowe's Quote Support Program (QSP) to receive deeper discounts. The QSP discounts will apply to walk-in solution only and will not stack with the Government Contract Savings Cards. However, the Government Contract Savings Cards will need to be scanned at point of sale to ensure contract compliance.

10. Please provide contract information for the person(s) who will be responsible for the following areas, including resumes:

- a. Sales
- b. Sales Support
- c. Marketing
- d. Financial Reporting
- e. Executive Support



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The following are high level exclusive features and benefits of each of the three business credit programs:

a. Lowe's Account Receivable (LAR)

- No annual Fee
- Ability to issue multiple cards, establish Parent/Child accounts, add authorized purchasers & purchase tracking at card/account level
- Ability to pay by invoice
- Finance charges are not applied on Government Entities accounts
- Purchasing control, can only be used at Lowe's
- Dedicated account representative
- Eligible to receive 2% prompt pay discount when using the LAR when purchasing under the TCPN contract
- Online account management through Lowesforpros.com
- For more information please visit:
https://credit.lowes.com/LowesMarketing/marketing/businessCreditCenter.jsp?cm_sp=NoDivision--Credit|LeftNav--Content|Business_Manage_Business_Account

b. Lowe's Business Account (LBA)

- Offers minimum monthly payments
- Itemized statements with product level detail
- Purchase Control; can only be used at Lowe's
- Ability to issue multiple cards
- Minimum monthly payments or pay in full each month
- Online account management through Lowesforpros.com
- For more information please visit:
https://credit.lowes.com/LowesMarketing/marketing/businessCreditCenter.jsp?cm_sp=NoDivision--Credit|LeftNav--Content|Business_Manage_Business_Account

c. Lowe's Business Rewards Card (LBR)

- Earn points for purchases at Lowe's and everywhere American
- Make a minimum payment or pay in full each month
- No Annual Fee
- Online Account Management - Account spend, balance and payment alerts available through mobile devices or email
- For more information please visit:
https://credit.lowes.com/LowesMarketing/marketing/businessCreditCenter.jsp?cm_sp=NoDivision--Credit|LeftNav--Content|Business_Manage_Business_Account

12. Who is your competition in the Marketplace?

Proprietary Information