



PROCUREMENT SOLICITATION DOCUMENT

NOTICE TO PROPOSERS

RFQ #791-2023-03-008

**Energy Savings Performance Contracts
791 Purchasing Cooperative**

A Cooperative Purchasing Program available for membership by Government and Other Entities in all fifty states.

And

Lead Agency: Region 15 Education Service Center

Issued: March 28, 2023

Submission Deadline: April 14 by 1:00 p.m.

Region 15 Education Service Center

ATTN: 791COOP

C/O: Ms. Charity Vasquez

612 South Irene Street

San Angelo, TX 76903

Questions: Admin@791Coop.org

The solicitation documents may be found at: <https://791COOP.ionwave.net>

If a problem is encountered accessing the solicitation, please contact 791 COOP at the address or phone listed above for help.

This solicitation is a Request for Qualifications (RFQ) method provided in the Texas Government Code §2254.004 and as specified in the Texas Education Code § 44.901 and Texas Local Government Code § 302 et al for the category: Energy Savings Performance Contracts. Energy Savings Performance Contracts are defined in the section entitled “Specifications” provided herein for both Local Government in Texas Local Government Code § 302 in and Public Schools in Texas Education Code § 44.901, as applicable.

NOTICE: The use of the terms Solicitation, Bid, Request for Proposals, RFP, Request for Competitive Sealed Proposals, RCSP, Request for Qualifications (RFQ), or other specific terms may not be accurate in legal terminology and should be construed to mean the method of competitive procurement listed above with the legal citation of the source of the procurement method. Example: “This Solicitation is a Request for Qualifications as permitted in the Texas Education Code Section 44.031”.

From and Signature are required in Section VIII. CERTIFICATIONS OF OFFEROR to submit and to be



considered.

I. Summary of Request for Qualifications Instructions

A. PROFESSIONAL SERVICES AGREEMENT.

THIS SOLICITATION IS INTENDED FOR A PROFESSIONAL SERVICES AGREEMENT. IT IS INTENDED FOR USE OF ESC REGION 15, 791COOP AND 791COOP MEMBER ENTITIES OR FUTURE MEMBERS TO PIGGYBACK UPON AND UTILIZE AS THEIR OWN SOLICITATION FOR LEGAL PROCUREMENT. BECAUSE MEMBER ENTITIES PIGGYBACKING UPON AN AGREEMENT RESULTING FROM THIS SOLICITATION MAY DO SO AT THEIR DISCRETION AND TIMING, ANY SCOPE REQUIREMENTS OF THE SOLICITATION MAY CHANGE DURING THE LIFE OF THE RESULTING AGREEMENTS AND NO SPECIFIC VOLUME OF PURCHASES IS GUARANTEED BY 791COOP.

Below is summary of the important RFQ deadlines and submittal instructions. More detailed information is provided in the following pages of this RFQ:

1. Responses are **due April 14, 2023 by 1:00 pm central time.**
2. **Questions regarding this RFQ will be accepted until 5:00 pm central time on April 7, 2023.**
3. Responses are requested to be uploaded into ION Wave, an online system used by 791 Cooperative to collect and organize proposals. Paper proposals may still be submitted to:

Region 15 Education Service Center
ATTN: 791COOP
C/O: Ms. Charity Vasquez
612 South Irene Street
San Angelo, TX 76903
4. All Proposers must download and review the Vendor Agreement from ION Wave.
 - a. If Proposer accepts the terms and conditions as defined in the Vendor Agreement, you must submit a statement with your response stating you have no deviations or suggested changes to the Vendor Agreement.
 - b. If Proposer would like to suggest language changes to the Vendor Agreement, Proposer must upload a redlined version of the Vendor Agreement with their proposal into ION Wave. If no redlined version of the Vendor Agreement is submitted to 791COOP, 791COOP will assume Proposer has accepted all terms and conditions of the Vendor Agreement and 791COOP will not entertain suggested language changes at a later date.
5. Proposer must answer all questions contained in the PROPOSAL SCORING, EVALUATION AND RESPONDENT QUESTIONS Section of this RFP and upload to ION Wave e-bid system.
6. Proposer must complete all forms and certifications that are provided as a part of this RFP. All certification forms must be downloaded from ION Wave, at: <https://791COOP.ionwave.net>



7. Proposer must complete all forms contained in ION Wave, at:
<https://791COOP.ionwave.net>

B. Definition:

The Offeror responding to this RFQ may be referred to as, proposer, responder, Offeror, respondent, vendor, company, firm or other similar moniker.



II. The General Information

FINANCING OF 791COOP and Lead Agency Region, 15 Education Service Center

791 COOP Vendor Paid Fee for RFQ #791-2023-03-008 Energy Savings Performance Contracts

The total cost of the 791 COOP program, in most cases, is primarily funded through an administration fee paid to 791 COOP by the awarded contractors. The fee is based on actual vendor project sales. Vendor will pay the fee on the actual invoiced and paid sales to 791 COOP members. Fees are not assessed to vendors for shipping cost, required bond cost, or any taxes that may be applicable.

791 COOP establishes a fee for each solicitation for proposals that is in the best interest of 791 COOP and its members.

The fee schedule for agreements awarded under solicitation **is 1.0 %** of the value of the contract paid by 791 COOP member to the contractor.

Term of Agreement and Renewals

The initial term of the agreement is five (5) years.

The awards will expire on **July 31, 2025.**

THIS CLAUSE CONTROLS OVER ANY OTHER TERM IN ANY OTHER PART OF THIS SOLICITATION. 791 COOP reserved the right to solicit proposals at any time it is in the best interest of 791 COOP and/or its members.

Vendor Questions

Questions about the specific SOLICITATION shall be submitted to admin@791COOP.org with the following in the subject line: "RFQ #791-2023-03-008 Energy Savings Performance Contracts contractor question". Questions of a ministerial nature will be answered without an addendum, but questions of a substantive nature that are not addressed in the SOLICITATION or deemed relevant to the process by 791 COOPERATIVE will be addressed by properly posted addendum.

QUESTIONS WILL BE RECEIVED UNTIL April 7, 2023 AT 5:00 PM Local Time.

NO Pre-Bid Meeting Scheduled

A Pre-Bid Meeting may be requested by any proposer, if you wish to request a Pre-Bid Meeting, please email admin@791COOP.org by 10 a.m., April 1, 2023. If a Pre-Bid meeting is scheduled, an addendum posted and a notification will be sent by the electronic bidding system to all known interested parties. If requested, 791 COOPERATIVE reserves the right to determine if a Pre-Bid Meeting is held.

791 COOPERATIVE agreements are available for use by all schools, colleges, universities, cities, counties and other government entities in all fifty states if permitted by the jurisdictions of the governmental entities.

ANTICIPATED SCHEDULE OF AWARD OR RELATED EVENT:

These anticipated dates may change due to number of responses and staff workloads or extension of time for the due date. The anticipated schedule is as follows:

RFP Issued	March 28, 2023
Pre-Proposal Conference	None
Inquiry Period Ends	April 1, 2023 at 5:00 pm (CDT)
Proposal Due Date	April 14, 2023 by 1:00pm (CDT)
Proposal Opening	April 14 at 1:00 pm (CDT)
Anticipated Award	April 21, 2023*
Award Notifications	April 21, 2023*
Contract Start	May 1, 2023*
Contract End	April 30, 2028*

*These dates may be later or earlier, depending upon the number of Responses received.

Non-Award notices will be e-mailed to contractors.

Negotiating deviations to terms and conditions is very time consuming, so Vendors with deviations may be evaluated last. Thus, 791 COOP does not delay potential awards to vendors that do not submit deviations.

III. RFQ Submission and Evaluation

Proposers must provide all forms and references required and submit a proposal that describes how the proposer is qualified to provide Energy Savings Performance Contracts to 791 COOP members in the manner described in the Specifications section below.

Proposals may include all relevant information about the proposer that illustrates the proposer's ability to provide Energy Savings Performance Contract supplies and services, including but not limited to:

1. **References:** please provide references that have entered into an Energy Savings Performance Contract with the proposer: **15 points**
 - a. Ability to successfully complete projects on time and to customer satisfaction.
 - b. Provide at least 15 references:
 - i. Five (5) references from 0 years up to 5 years ago;
 - ii. Five (5) references from over 5 years ago up to 10 years ago;
 - iii. Five (5) references from over ten years up to 25 years ago or programs that were completed.
2. **Past Experience with 791 COOP:** **0 points** No previous contracts.
3. **Project Management:** **15 points**
 - a. Comprehensiveness and rationale of project management plan, based on:
 - i. Approach to project management, including staffing and contractor- oversight
 - ii. Ability to successfully complete projects on time and to customer satisfaction.
 - b. Method employed to establish baseline energy use in individual buildings and facility-wide
 - c. Method of measurement and verification used to demonstrate energy use reduction and cost savings as guaranteed
4. **Successful experience in the field of Energy Savings Performance Contracts.** **40 points**
 - a. Business unit dedicated to providing guaranteed energy savings programs.
 - b. Business unit dedicated to ensuring project performance.
 - c. Affiliation with energy and/or business organizations (including ISO certification, 6 Sigma, and EPA or DOE affiliations.
5. **Staffing/Personnel:** **15 points**
 - a. Quality of personnel assigned to projects and degree of pertinent experience.
 - i. Provide education, license, and certification qualifications of the key personnel and positions (not naming the individuals)



- ii. Provide number the of years' experience of the key personnel and positions (not naming the individuals) performing similar or the same type functions required to perform this program.

6. Financial strength/ Bonding Capacity: 15 points

- a. Demonstrable ability to bond savings through third party surety.
- b. Provide information on the Bonding Strength of the third party surety.
- c. Provide any financial regulatory filings for publicly traded firms for the past 2 years.
- d. For privately owned firms please provide at least one of the following:
 - i. Financial or Credit ratings from Dun and Bradstreet; or
 - ii. Financial Statement (audited or reviewed by CPA); or
 - iii. Any other verifiable credit/financial rating information the firm wishes to provide.

These may be listed as confidential and submitted with the Signed Confidential Information Claim for (to be downloaded from the Solicitation posting on Ionwave at:

<https://791COOP.ionwave.net>

Proposer may include other relevant information for 791 COOP to consider. Proposer must Score at least 80 points for award.



IV. Specifications

This purpose of this Request for Qualifications is to identify and award agreements to highly qualified vendors capable of entering into Energy Savings Performance Contracts with 791 COOP members.

Energy Savings Performance Contracts are governed by two sections of Texas Statutes, Local Government in Texas Local Government Code § 302 in and Public Schools in Texas Education Code § 44.901, depending on the 791 COOP member's type of governmental entity.

The aforementioned statutes specify that Energy Savings Performance Contracts must be procured according to TEXAS GOVERNMENT CODE §2254.004 methods. TEXAS GOVERNMENT CODE §2254.004 title description is listed as "CONTRACT FOR PROFESSIONAL SERVICES OF ARCHITECT, ENGINEER, OR SURVEYOR". This can be misleading because entities may not engage architect and engineer services through a cooperative contract such as this. However, the controlling statutes below only specify that the procurement methodology provided in **TEXAS GOVERNMENT CODE §2254.004** be used for the procurement of Energy Savings Performance Contracts.

NO PRICING IS SOLICITED OR PERMITTED TO BE PROPOSED FOR THIS RFQ PURSUANT TO TEXAS GOVERNMENT CODE §2254.004. THIS IS A REQUEST FOR QUALIFICATIONS ONLY.

NOTE: 791 COOP members are under no obligation to negotiate exclusively with 791 COOP awarded providers of Energy Savings Performance Contracts.

TEXAS GOVERNMENT CODE Sec. 2254.004 provides the following methodology. 791 COOP is identifying highly qualified providers of Energy Savings Performance Contracts for 791 COOP members to consider, rank and negotiate with according to the rules below.

In procuring an Energy Savings Performance Contract Provider, the 791 Coop Member may consider any awarded 791 COOP provider under this RFQ. The 791 COOP members will then determine from the list of 791 COOP awarded Energy Savings Performance Contract providers which vendor is the most highly qualified for the Member's purposes as provided below in section. The 791 COOP Member will then attempt to negotiate with the most highly qualified provider, as determined by the 791 COOP Members, a contract at a fair and reasonable price as provided below.

If the 791 Coop member cannot negotiate a satisfactory contract with the most highly rated provider, then the entity shall:

- (1) formally end negotiations with that provider;
- (2) select the next most highly qualified provider; and
- (3) attempt to negotiate a contract with that provider at a fair and reasonable price.

The entity shall continue the process described to select and negotiate with providers until a contract is entered into or the 791 COOP member determines it no longer desires to enter into an Energy Savings Performance Contract.

The Statutes are included below to specifically describe what types of Energy Savings Performance



Contracts are permitted and how they are defined specifically. 791 COOP has members that are defined in both sections of the law and the definitions for each type are provided in the statutes below. Energy Savings Performance Contracts entered into by the awarded vendors and the 791 COOP members pursuant to this RFQ, shall comply with the requirements specified in the following statutes depending on the applicable 791 COOP member entity classifications and which statute would apply to the 791 COOP member as if they were a Texas entity, if they are located in another state.

Example #1: A public PK-12 school or a community college in Texas or a state other than Texas would follow the Texas Education Code statute in determining what is permissible under the statute.

Example#2: A municipality or county government in Texas or a state other than Texas would follow the Texas Local Government Code statute in determining what is permissible under the statute.

Controlling Codes:

TEXAS EDUCATION CODE

ENERGY SAVINGS PERFORMANCE CONTRACTS SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 44.901. ENERGY SAVINGS PERFORMANCE CONTRACTS. (a) In this section,

"Energy savings performance contract" means a contract for energy or water conservation measures to reduce energy or water consumption or operating costs of new or existing school facilities in which the estimated savings in utility costs resulting from the measures is guaranteed to offset the cost of the measures over a specified period. The term includes a contract for the installation or implementation of:

- (1) insulation of a building structure and systems within the building;
- (2) storm windows or doors, caulking or weather-stripping, multi-glazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;
- (3) automatic energy control systems, including computer software and technical data licenses;
- (4) heating, ventilating, or air-conditioning system modifications or replacements that reduce energy or water consumption;
- (5) lighting fixtures that increase energy efficiency;
- (6) energy recovery systems;
- (7) electric systems improvements;
- (8) water-conserving fixtures, appliances, and equipment or the substitution of non-water-using fixtures, appliances, and equipment;
- (9) water-conserving landscape irrigation equipment;
- (10) landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:
 - (A) landscape contouring, including the use of berms, swales, and terraces; and
 - (B) the use of soil amendments that increase the water-holding capacity of the soil, including compost;
- (11) rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;
- (12) equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;

(13) equipment needed to capture water from nonconventional, alternate sources, including air conditioning condensate or graywater, for nonpotable uses;

(14) metering equipment needed to segregate water use in order to identify water conservation opportunities or verify water savings; or

(15) other energy or water conservation-related improvements or equipment, including improvements or equipment relating to renewable energy or nonconventional water sources or water reuse.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1347, Sec. 5, eff. June 19, 2009.

(c) Each energy or water conservation measure must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations. Notwithstanding Subsection (a), an energy savings performance contract may not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which the public water supply system officials do not have sanitary control, to be returned to the potable water supply.

(d) The board may enter into energy savings performance contracts only with persons who are experienced in the design, implementation, and installation of the energy or water conservation measures addressed by the contract.

(e) Before entering into an energy savings performance contract, the board shall require the provider of the energy or water conservation measures to file with the board a payment and performance bond relating to the installation of the measures in accordance with Chapter [2253](#), Government Code. The board may also require a separate bond to cover the value of the guaranteed savings on the contract.

(f) An energy savings performance contract may be financed:

(1) under a lease/purchase contract that has a term not to exceed 20 years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing;

(2) with the proceeds of bonds; or

(3) under a contract with the provider of the energy or water conservation measures that has a term not to exceed the lesser of 20 years from the final date of installation or the average useful life of the energy or water conservation or usage measures.

(f-1) Notwithstanding other law, the board may use any available money, other than money borrowed from this state, to pay the provider of the energy or water conservation measures under this section, and the board is not required to pay for such costs solely out of the savings realized by the school district under an energy savings performance contract. The board may contract with the provider to perform work that is related to, connected with, or otherwise ancillary to the measures identified in the scope of an energy savings performance



contract.

(g) An energy savings performance contract shall contain provisions requiring the provider of the energy or water conservation measures to guarantee the amount of the savings to be realized by the school district under the contract. If the term of an energy savings performance contract exceeds one year, the school district's contractual obligations in any one year during the term of the contract beginning after the final date of installation may not exceed the total energy, water, wastewater, and operating cost savings, including electrical, gas, water, wastewater, or other utility cost savings and operating cost savings resulting from the measures, as determined by the school district in this subsection, divided by the number of years in the contract term.

(h) An energy savings performance contract shall be let according to the procedures established for procuring certain professional services by Section [2254.004](#), Government Code. Notice of the request for qualifications shall be published in the manner provided for competitive bidding.

(i) Before entering into an energy savings performance contract, the board must require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who has a minimum of three years of experience in energy calculation and review, is not an officer or employee of an offeror for the contract under review, and is not otherwise associated with the contract. In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. Sections [1001.053](#) and [1001.407](#), Occupations Code, apply to work performed under the contract.

(j) Chapter [2269](#), Government Code, does not apply to this section.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1142, Sec. 1, eff. June 19, 1997; Acts 1999, 76th Leg., ch. 361, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 573, Sec. 1, 2, 11, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 5, 121(1), eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. [12](#)), Sec. 3.03, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. [831](#)), Sec. 1, eff. June 16, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1347 (S.B. [300](#)), Sec. 5, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 982 (H.B. [1728](#)), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 3.01, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.002(6), eff. September 1, 2013.

LOCAL GOVERNMENT CODE

TITLE 9. PUBLIC BUILDINGS AND GROUNDS

SUBTITLE C. PUBLIC BUILDING PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT CHAPTER 302. ENERGY SAVINGS PERFORMANCE CONTRACTS FOR LOCAL GOVERNMENTS

Sec. 302.001. DEFINITIONS. In this chapter:

(1) "Baseline" means a calculation or set of calculations in an energy savings performance contract that may be based on historical costs, revenues, accuracy, or related components and used for determining:

(A) the costs for energy or water usage by a local government and related net operating costs;

(B) the billable revenues from providing energy, water, or other utilities to users; or

(C) the efficiency or accuracy of metering or related equipment, systems, or processes or procedures.

(2) "Energy or water conservation or usage measures" means:

(i) the installation or implementation of any of the items, equipment, modifications,

(ii) estimated energy savings;

(iii) an estimated increase in billable revenues; or

(iv) an estimated increase in meter accuracy; or

(B) the training for, or services related to, the operation of the items, equipment, modifications, alterations, improvements, systems, or other measures described by Paragraph (A).

(3) "Energy savings" means an estimated reduction in net fuel costs, energy costs, water costs, stormwater fees, other utility costs, or related net operating costs from or as compared to an established baseline of those costs. The term does not include an estimated reduction due to a decrease in energy rates that is not derived from increased conservation or reduced usage.

(4) "Energy savings performance contract" means a contract between a local government and a provider for energy or water conservation or usage measures in which the estimated energy savings, utility cost savings, increase in billable revenues, or increase in meter accuracy resulting from the measures is subject to guarantee to offset the cost of the energy or water conservation or usage measures over a specified period. The term includes a contract related to the pilot program described by Subdivision (9-a) and a contract for the installation or implementation of the following in new or existing facilities, including all causally connected work:

- (A) insulation of a building structure and systems within the building;
 - (B) storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;
 - (C) automatic energy control systems, including computer software and technical data licenses;
 - (D) heating, ventilating, or air-conditioning system modifications or replacements that reduce energy or water consumption;
 - (E) lighting fixtures that increase energy efficiency;
 - (F) energy recovery systems;
 - (G) electric systems improvements;
 - (H) water-conserving fixtures, appliances, and equipment or the substitution of non- water-using fixtures, appliances, and equipment;
 - (I) water-conserving landscape irrigation equipment;
 - (J) landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:
 - (i) landscape contouring, including the use of berms, swales, and terraces; and
 - (ii) the use of soil amendments that increase the water-holding capacity of the soil, including compost;
 - (K) rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;
 - (L) equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;
 - (M) equipment needed to capture water from nonconventional, alternate sources, including air-conditioning condensate or graywater, for nonpotable uses;
 - (N) metering or related equipment or systems that improve the accuracy of billable- revenue-generation systems;
 - (O) alternative fuel programs resulting in energy cost savings and reduced emissions for local government vehicles, including fleet vehicles;
 - (P) programs resulting in utility cost savings; or
 - (Q) other energy or water conservation-related improvements or equipment, including improvements or equipment relating to renewable energy or nonconventional water sources or water reuse.
- (5) "Guarantee" means a written guarantee of a provider that the energy



savings, increase in billable revenues, or increase in meter accuracy from the energy or water conservation or usage measures will at least equal the cost of the energy or water conservation or usage measures, all causally connected work, and ancillary improvements provided for in an energy savings performance contract.

(6) "Increase in billable revenues" means an estimated increase in billable revenues as compared to an established baseline of billable revenues.

(7) "Increase in meter accuracy" means an estimated increase in efficiency or accuracy of metering or related equipment, systems, or processes or procedures that is calculated or determined by using applicable industry engineering standards.

(8) "Local government" means a county, municipality, or other political subdivision of this state. The term does not include a school district authorized to enter into an energy savings performance contract under Section [44.901](#), Education Code.

(9) "Meter guarantee" means a guarantee of a stipulated or agreed upon increase in billable revenues to result from the estimated increase in meter accuracy, based on stipulated or agreed upon components of a billable revenue calculation in an energy savings performance contract.

(9-a) "Pilot program" means a pilot program operated by the Energy Systems Laboratory at the Texas A&M Engineering Experiment Station, in consultation with the Texas Facilities Commission and the State Energy Conservation Office, that:

(A) establishes and implements energy efficiency improvements to state-owned buildings maintained by the commission;

(B) generates savings in utility costs resulting from the improvements resulting in at least a 30 percent annual return on the costs of the improvements;

(C) provides for the participation of not fewer than two companies selected by the commission; and

(D) provides for any money attributable to utility cost savings resulting from the pilot program to be appropriated only to the commission.

(10) "Provider" means an entity in the business of designing, implementing, and installing of energy or water conservation or usage measures or an affiliate of such an entity.

Added by Acts 1997, 75th Leg., ch. 635, Sec. 1, eff. June 11, 1997. Amended by Acts 2001, 77th Leg., ch. 573, Sec. 6, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 78, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. [831](#)), Sec. 4, eff. June 16, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 982 (H.B. [1728](#)), Sec. 5, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1021 (H.B. [1184](#)), Sec. 1, eff. June 19, 2015



Sec. 302.002. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) The governing body of a local government may enter into an energy savings performance contract in accordance with this chapter.

(b) Each energy or water conservation or usage measure must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations. Notwithstanding Section [302.001](#), an energy savings performance contract may not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which public water supply system officials do not have sanitary control to be returned to the potable water supply.

Added by Acts 1997, 75th Leg., ch. 635, Sec. 1, eff. June 11, 1997. Amended by Acts 2001, 77th Leg., ch. 573, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 79, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. [831](#)), Sec. 5, eff. June 16, 2007.

Sec. 302.003. PAYMENT AND PERFORMANCE BOND. Notwithstanding any other law, before entering into an energy savings performance contract, the governing body of the local government shall require the provider of the energy or water conservation or usage measures to file with the governing body a payment and performance bond relating to the installation of the measures in accordance with Chapter [2253](#), Government Code. The governing body may also require a separate bond to cover the value of the guarantee.

Added by Acts 1997, 75th Leg., ch. 635, Sec. 1, eff. June 11, 1997. Amended by Acts 2001, 77th Leg., ch. 573, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 80, 121(23), eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. [831](#)), Sec. 6, eff. June 16, 2007.

Sec. 302.004. METHOD OF FINANCING; TERMS OF CONTRACT.

(a) An energy savings performance contract may be financed:

- (1) under a lease-purchase contract that has a term not to exceed 20 years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing;
- (2) with the proceeds of bonds; or
- (3) under a contract with the provider of the energy or water conservation or usage measures that has a term not to exceed the lesser of 20 years from the final date of installation or the average useful life of the energy or water conservation or usage measures.



(a-1) Notwithstanding other law, the governing body of a local government may use any available money, other than money borrowed from this state, to pay the provider of the energy or water conservation measures under this section, and the governing body is not required to pay for such costs solely out of the savings realized by the local government under an energy savings performance contract. The governing body may contract with the provider to perform work that is related to, connected with, or otherwise ancillary to the measures identified in the scope of an energy savings performance contract.

(b) An energy savings performance contract shall contain provisions requiring the provider of the energy or water conservation or usage measures to provide a guarantee. If the term of the contract exceeds one year, the local government's contractual obligations in any one year during the term of the contract beginning after the final date of installation may not exceed the total energy and water savings, the net operating cost savings, and the stipulated or agreed upon increase in billable revenues resulting from the estimated increase in meter accuracy, divided by the number of years in the contract term.

Added by Acts 1997, 75th Leg., ch. 635, Sec. 1, eff. June 11, 1997. Amended by Acts 1999, 76th Leg., ch. 361, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 573, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 6, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 81, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. [831](#)), Sec. 7, eff. June 16, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 982 (H.B. [1728](#)), Sec. 6, eff. September 1, 2011.

Sec. 302.005. BIDDING PROCEDURES; AWARD OF CONTRACT.

(a) An energy savings performance contract under this chapter may be let in accordance with the procedures established for procuring certain professional services by Section [2254.004](#), Government Code. Notice of the request for qualifications shall be published in the manner provided for competitive bidding.

(b) Before entering into an energy savings performance contract, the governing body must require that the energy savings, increase in billable revenues, or increase in meter accuracy estimated or projected by a provider be reviewed by a licensed professional engineer who:

- (1) has a minimum of three years of experience in energy calculation and review;
- (2) is not an officer or employee of a provider for the contract under review; and
- (3) is not otherwise associated with the contract.

(c) In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. Sections [1001.053](#) and [1001.407](#), Occupations



Code, apply to work performed under the contract.

Added by Acts 1997, 75th Leg., ch. 635, Sec. 1, eff. June 11, 1997. Amended by Acts 2001, 77th Leg., ch. 573, Sec. 12, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 7; Acts 2003, 78th Leg., ch. 1276, Sec. 12.005, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1310, Sec. 82, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. [831](#)), Sec. 8, eff. June 16, 2007.

Sec. 302.006. METER GUARANTEES.

(a) This section applies to any energy savings performance contract that:

(1) provides for any metering or related equipment, system, or process or procedure; and

(2) includes a meter guarantee by the provider, regardless of whether the meter guarantee is a part of a broader guarantee applicable to other energy or water conservation or usage measures or causally connected work.

(b) Not later than the fifth anniversary of the effective date of an energy savings performance contract, an engineer shall test a statistically relevant sample of the meters installed or implemented under the contract to determine or calculate the actual average accuracy and shall compare the actual average accuracy to the baseline average accuracy of those tested meters.

(c) A meter guarantee applies if the engineer reports to the local government and the provider that the average accuracy of the tested meters as of the testing date is less than the baseline average accuracy of the tested meters as of the testing date.

(d) The amount payable under the meter guarantee must be determined for each year subject to the engineer's report and is equal to the difference between:

(1) the agreed increase in billable revenues based on the estimated accuracy of all of the meters for each year, according to the energy savings performance contract; and

(2) the revenues for the same year that would result from applying the engineer's reported actual average accuracy of the tested meters to all of the meters subject to the energy savings performance contract, using the same contract components that were used to calculate the agreed increase in billable revenues for that year, assuming the annual decrease in actual average accuracy of all the meters was a pro rata percentage of the reported total decrease in actual average accuracy.

(e) Notwithstanding Subsection (d), if the meter guarantee in the contract is part of a broader guarantee applicable to other energy or water conservation or usage measures or causally connected work under the contract, the amount payable under the meter guarantee for any year during the measurement period is reduced or offset by the difference between:

(1) the sum of the energy savings and the increase in billable revenues resulting



from the other energy or water conservation or usage measures or causally connected work for that year during the measurement period; and the guaranteed amount of the energy savings and the increase in billable revenues from the other energy or water conservation or usage measures or causally connected work for that year during the measurement period.

(f) A test conducted under this section must be performed in accordance with the procedures established by the International Performance Measurement and Verification Protocol or succeeding standards of the United States Department of Energy.

(g) An engineer conducting a test under this section shall:

(1) verify that the tested meters have been properly maintained and are operating properly; and

(2) comply with Section [302.005](#)(c).

Added by Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. [831](#)), Sec. 9, eff. June 16, 2007.

Sec. 302.007. EXEMPTION FROM OTHER CONTRACTING LAW. Chapter [2269](#), Government Code, does not apply to this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 3.04, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.002(25), eff. September 1, 2013.

ADDENDUM #1

TEXAS GOVERNMENT CODE Sec. 2166.406 AND ENERGY SAVINGS PERFORMANCE CONTRACTS and TEXAS EDUCATION CODE Sec. 51.927.ENERGY SAVINGS PERFORMANCE CONTRACTS.

The additional controlling Texas statutes are below and are incorporated in this RFQ verbatim per below.

TEXAS GOVERNMENT CODE Sec. 2166.406. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) In this section, "energy savings performance contract" means a contract for energy or water conservation measures to reduce energy or water consumption or operating costs of new or existing governmental facilities in which the estimated savings in utility costs resulting from the measures is guaranteed to offset the cost of the measures over a specified period. The term includes a contract for the installation of:

- (1) insulation of a building structure and systems within the building;
- (2) storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;
- (3) automatic energy control systems, including computer software and technical data licenses;
- (4) heating, ventilating, or air-conditioning system modifications or replacements that reduce energy or water consumption;
- (5) lighting fixtures that increase energy efficiency;
- (6) energy recovery systems;
- (7) electric systems improvements;
- (8) water-conserving fixtures, appliances, and equipment or the substitution of non-water-using fixtures, appliances, and equipment;
- (9) water-conserving landscape irrigation equipment;
- (10) landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:
 - (A) landscape contouring, including the use of berms, swales, and terraces; and the use of soil amendments that increase the water-holding capacity of the soil, including compost;
- (11) rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;
- (12) equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;
- (13) equipment needed to capture water from nonconventional, alternate

sources, including air conditioning condensate or graywater, for nonpotable uses;

(14) metering equipment needed to segregate water use in order to identify water conservation opportunities or verify water savings; or

(15) other energy or water conservation-related improvements or equipment including improvements or equipment related to renewable energy or nonconventional water sources or water reuse.

(b) Notwithstanding any other provision of this chapter, a state agency, without the consent of the commission, may enter into an energy savings performance contract in accordance with this section.

(c) Each energy or water conservation measure must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations.

Notwithstanding Subsection (a), an energy savings performance contract may not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which the public water supply system officials do not have sanitary control to be returned to the potable water supply.

(d) A state agency may enter into energy savings performance contracts only with a person who is experienced in the design, implementation, and installation of the energy or water conservation measures addressed by the contract.

(e) Before entering into an energy savings performance contract, a state agency shall require the provider of the energy or water conservation measures to file with the agency a payment and performance bond relating to the installation of the measures in accordance with Chapter [2253](#). The agency may also require a separate bond to cover the value of the guaranteed savings on the contract.

(f) The state agency may enter into an energy savings performance contract for a period of more than one year only if the state agency finds that the amount the state agency would spend on the energy or water conservation measures will not exceed the amount to be saved in energy, water, wastewater, and operating costs over 20 years from the date of installation.

(f-1) Notwithstanding other law, the state agency may use any available money, other than money borrowed from this state, to pay the provider of the energy or water conservation measures under this section, and the state agency is not required to pay for such costs solely out of the savings realized by the state agency under an energy savings performance contract. The state agency may contract with the provider to perform work that is related to, connected with, or otherwise ancillary to the measures identified in the scope of an energy savings performance contract.

(g) An energy savings performance contract with respect to buildings or facilities may be financed:

(1) under a lease/purchase contract that has a term not to exceed 20 years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing

or long-term financing, including a lease/purchase contract under the master equipment lease purchase program administered by the Texas Public Finance Authority under Chapter [1232](#);

(2) with the proceeds of bonds; or

(3) under a contract with the provider of the energy or water conservation measures that has a term not to exceed the lesser of 20 years from the final date of installation or the average useful life of the energy or water conservation or usage measures.

(h) An energy savings performance contract shall contain provisions requiring the provider of the energy or water conservation measures to guarantee the amount of the savings to be realized by the state agency under the contract. If the term of the contract exceeds one year, the agency's contractual obligation, including costs of design, engineering, installation, and anticipated debt service, in any one year during the term of the contract beginning after the final date of installation may not exceed the total energy, water, wastewater, and operating cost savings, including electrical, gas, water, wastewater, or other utility cost savings and operating cost savings resulting from the measures, as determined by the state agency in this subsection, divided by the number of years in the contract term.

(i) An energy savings performance contract shall be let according to the procedures established for procuring certain professional services by Section [2254.004](#). Notice of the request for qualifications shall be given in the manner provided by Section [2156.002](#). The State Energy Conservation Office shall establish guidelines and an approval process for awarding energy savings performance contracts. The guidelines adopted under this subsection must require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who has a minimum of three years of experience in energy calculation and review, is not an officer or employee of an offeror for the contract under review, and is not otherwise associated with the contract. In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. An energy savings performance contract may not be entered into unless the contract has been approved by the State Energy Conservation Office. Sections [1001.053](#) and [1001.407](#), Occupations Code, apply to work performed under the contract.

(j) The legislature shall base an agency's appropriation for energy, water, and wastewater costs during a fiscal year on the sum of:

(1) the agency's estimated energy, water, and wastewater costs for that fiscal year;

(2) if an energy savings performance contract is in effect, the agency's estimated net savings resulting from the contract during the contract term, divided by the number of years in the contract term.

(k) Chapter [2269](#) does not apply to this section.

(1) The guidelines adopted under Subsection (i) must require the State Energy



Conservation Office to:

(1) review any reports submitted to the office that measure and verify cost savings to a state agency under an energy savings performance contract; and based on the reports, provide an analysis, on a periodic basis, of the cost savings under the energy savings performance contract to the state agency and the Legislative Budget Board until the state agency determines that the analysis is no longer required to accurately measure cost savings.

Added by Acts 1997, 75th Leg., ch. 1142, Sec. 3, eff. June 19, 1997. Amended by Acts 1999, 76th Leg., ch. 361, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 573, Sec. 9, 13, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 58, 121(14), eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. [831](#)), Sec. 3, eff. June 16, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 982 (H.B. [1728](#)), Sec. 4, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 3.03, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.002(10), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 537 (S.B. [533](#)), Sec. 2, eff. June 14, 2013.

TEXAS EDUCATION CODE Sec. 51.927. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) In this section, "energy savings performance contract" means a contract for energy or water conservation measures to reduce energy or water consumption or operating costs of new or existing institutional facilities in which the estimated savings in utility costs resulting from the measures is guaranteed to offset the cost of the measures over a specified period. The term includes a contract for the installation or implementation of:

- (1) insulation of a building structure and systems within a building;
- (2) storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;
- (3) automatic energy control systems, including computer software and technical data licenses;
- (4) heating, ventilating, or air conditioning system modifications or replacements that reduce energy or water consumption;
- (5) lighting fixtures that increase energy efficiency;
- (6) energy recovery systems;
- (7) electric systems improvements;
- (8) water-conserving fixtures, appliances, and equipment or the substitution of non-water-using fixtures, appliances, and equipment;
- (9) water-conserving landscape irrigation equipment;
- (10) landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:
 - (A) landscape contouring, including the use of berms, swales, and terraces; and
 - (B) the use of soil amendments that increase the water-holding capacity of the soil, including compost;
- (11) rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;
- (12) equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;
- (13) equipment needed to capture water from nonconventional, alternate sources, including air conditioning condensate or graywater, for nonpotable uses;
- (14) metering equipment needed to segregate water use in order to identify water conservation opportunities or verify water savings; or

(15) other energy or water conservation-related improvements or equipment, including improvements or equipment related to renewable energy or nonconventional water sources or water reuse.

(b) The governing board of an institution of higher education may enter into an energy savings performance contract in accordance with this section.

(c) Each energy or water conservation measure must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations. Notwithstanding Subsection (a), an energy savings performance contract may not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which the public water supply system officials do not have sanitary control, to be returned to the potable water supply.

(d) The board may enter into energy savings performance contracts only with entities that are experienced in the design, implementation, and installation of the energy or water conservation measures addressed by the contract.

(e) Before entering into an energy savings performance contract, the board shall require the provider of the energy or water conservation measures to file with the board a payment and performance bond in accordance with Chapter [2253](#), Government Code. The board may also require a separate bond to cover the value of the guaranteed savings on the contract.

(f) The board may enter into an energy savings performance contract for a period of more than one year only if the board finds that the amount the institution would spend on the energy or water conservation measures will not exceed the amount to be saved in energy, water, wastewater, and operating costs over 20 years from the date of installation. If the term of the contract exceeds one year, the institution's contractual obligation in any year during the term of the contract beginning after the final date of installation may not exceed the total energy, water, wastewater, and operating cost savings, including electrical, gas, water, wastewater, or other utility cost savings and operating cost savings resulting from the measures, as determined by the board in this subsection, divided by the number of years in the contract term beginning after the final date of installation. The board shall consider all costs of the energy or water conservation measures, including costs of design, engineering, installation, maintenance, repairs, and debt service.

(g) An energy savings performance contract may be financed:

(1) under a lease/purchase contract that has a term not to exceed 20 years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing, including a lease/purchase contract under the master equipment lease purchase program administered by the Texas Public Finance Authority under Chapter [1232](#), Government Code;

(2) with the proceeds of bonds; or

(3) under a contract with the provider of the energy or water conservation measures that has a term not to exceed the lesser of 20 years from the final date of installation or

the average useful life of the energy or water conservation or usage measures.

(g-1) Notwithstanding other law, the board may use any available money, other than money borrowed from this state, to pay the provider of the energy or water conservation measures under this section, and the board is not required to pay for such costs solely out of the savings realized by the institution of higher education under an energy savings performance contract. The board may contract with the provider to perform work that is related to, connected with, or otherwise ancillary to the measures identified in the scope of an energy savings performance contract.

(h) An energy savings performance contract shall contain provisions requiring the provider of the energy or water conservation measures to guarantee the amount of the savings to be realized by the institution of higher education under the contract.

(i) An energy savings performance contract shall be let according to the procedures established for procuring certain professional services by Section [2254.004](#), Government Code. Notice of the request for qualifications shall be given in the manner provided by Section [2156.002](#), Government Code. The Texas Higher Education Coordinating Board, in consultation with the State Energy Conservation Office with regard to energy and water conservation measures, shall establish guidelines and an approval process for awarding energy savings performance contracts. The guidelines must require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who has a minimum of three years of experience in energy calculation and review, is not an officer or employee of an offeror for the contract under review, and is not otherwise associated with the contract. In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. A contract is not required to be reviewed or approved by the State Energy Conservation Office. Sections [1001.053](#) and [1001.407](#), Occupations Code, apply to work performed under the contract.

(j) The legislature shall base an institution's appropriation for energy, water, and wastewater costs during a fiscal year on the sum of:

(1) the institution's estimated energy, water, and wastewater costs for that fiscal year; and

(2) if an energy savings performance contract is in effect, the institution's estimated net savings resulting from the contract during the contract term, divided by the number of years in the contract term.

(k) Chapter [2269](#), Government Code, does not apply to this section.

(l) The guidelines established under Subsection (i) must require the Texas Higher Education Coordinating Board to:

(1) review any reports submitted to the board that measure and verify cost savings to an institution of higher education under an energy savings performance contract; and

(2) based on the reports, provide an analysis, on a periodic basis, of the cost savings under the energy savings performance contract to the governing board of the institution of higher education and the Legislative Budget Board until the governing board of the institution of higher education determines that the analysis is no longer required to accurately measure cost savings.

Added by Acts 1991, 72nd Leg., 2nd C.S., ch. 8, Sec. 3.07, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(92), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 773, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 17.19, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1142, Sec. 2, eff. June 19, 1997; Acts 1997, 75th Leg., ch. 627, Sec. 1, eff. June 11, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 4.03, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 361, Sec. 2, eff. Sept; 1, 1999; Acts 1999, 76th Leg., ch. 1450, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 573, Sec. 3, 4, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 6, 121(2), eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. [831](#)), Sec. 2, eff. June 16, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 982 (H.B. [1728](#)), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 3.02, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.002(7), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 537 (S.B. [533](#)), Sec. 1, eff. June 14, 2013.

ADDENDUM #1

V. About 791 COOP

791 COOP agreements are available for use by all schools, colleges, universities, cities, counties and other government entities in all fifty states if permitted by the jurisdictions of the governmental entities.

It is the purpose of this SOLICITATION to establish awarded vendor agreements to satisfy the procurement needs of participating member entities in this particular commodity category. These awarded agreements will enable member entities to purchase on an “as needed” basis from competitively awarded agreements with high performance vendors. Proposers are requested to submit a proposal for offering their line of available products that are commonly purchased by government agencies, cities, counties and educational entities.

- Awards will be made to the successful proposer(s) for the products and/or services. (Unless proposer has submitted inappropriate items for the commodity category. Those items will not be awarded. Example: a software company may not propose to perform construction work)
- 791 COOP reserves the right to award multiple vendors for each solicitation.
- This proposal is requested for the benefit of the current list of members and other new members as they execute 791 COOP membership Agreements in the future.
- 791 COOP reserves the right to extend the proposal deadline for any reason.
- 791 COOP reserves the right to make changes to this Solicitation by way of one or more posted addenda.

Benefits of 791 COOP

- Provide government entities opportunities for greater efficiency and economy in acquiring goods and services through competitively procured vendor agreements.
- Provide comprehensive purchasing practices according the Laws of the State of Texas and Federal Regulation 2 CFR part 200, when appropriate, and is designed to result in competitive agreements that meet a wide variety of needs.
- Provide competitively priced purchasing options for multiple government entities that yields economic benefits usually unobtainable by the individual entity.
- Equalized purchasing power for smaller entities.
- Maintain credibility and confidence in business procedures by maintaining free, full and open competition for purchases and by complying with purchasing laws and ethical business practices.
- Provide document retention for competitive procurement process for all 791 COOP Awarded Agreements.



Customer Service

- 791 COOP staff is available to members for assistance in viewing/contacting awarded vendors for categories to make purchases and agreement decisions.
- 791 COOP provides a way for government entities to avoid the time and expense of seeking competition for purchases on an agency-by-agency basis.
- 791 COOP enables vendors to become more efficient and competitive by reducing the number of proposals that require responses to be made to individual entities.

Purchasing Procedures

- Agreements are established through free, full and open competition as described by the laws of the State of Texas and are available for utilization by other government entities anywhere in the United States, subject to each entities' jurisdictional law and regulation. Purchase orders or equivalent are issued by participating governmental entities directly to the Vendor or vendor assigned dealer. Purchase orders or equivalent are usually sent to the 791 COOP office where they are reviewed by the 791 COOP staff and forwarded to the Vendor within one working day. In some instances, the entity may send the purchase orders or equivalent directly to the vendor and report the purchase to 791 COOP.
- NOTE: It is always the vendor's responsibility under the 791 COOP agreement to report all sales under the agreement to 791 COOP.
- Vendors deliver goods/services directly to the participating member agency and then invoice the participating member agency. The Vendor receives payment directly from the participating member agency.

Notice of Confidentiality of Proposed Information

The proposal submitted and all information therein is available to 791 COOP members. Also, according to the Texas Public Information Act, any documents or information held by 791 COOP "may" be public information. In the documents for the proposer to complete is a declaration form entitled "CONFIDENTIAL INFORMATION SUBMITTED IN RESPONSE TO COMPETITIVE PROCUREMENT REQUESTS OF EDUCATION SERVICE CENTER REGION 15 AND 791 COOP IS GOVERNED BY **TEXAS GOVERNMENT CODE, CHAPTER 552**" that must be completed by the proposer that designates specified pages as confidential or waives confidentiality of the entire proposal.

VI. Proposal Instructions

1. Electronically sealed responses (to the RFQ) are the preferred and most accurate method and is highly encouraged through our online procurement software, ION Wave.
2. Responses may be amended at any time prior to the due date and time. ION wave permits you to withdraw and resubmit your proposal.
3. If an addendum is posted, you are required to login to the ION Wave bidding software and address the addendum. No addendum will be issued within five calendar days of the opening unless it is to extend the opening or address a non-substantive issue. Legal Holidays not counted as calendar days are New Year's Day, Martin Luther King Day, Easter, Memorial Day, July 4th, Labor Day, Thanksgiving, Christmas.
4. Responses may be submitted on any or all sections, related to the category, unless stated otherwise. 791 COOP reserves the right to reject any or all proposals and to accept any proposal(s) deemed advantageous to the 791 COOP members and to waive any informality in the proposal process.
5. Deviations to any Terms, Conditions and/or Specifications shall be clearly noted in writing by the contractor and shall be included with the proposal. You must complete the forms and note any deviations in this solicitation.
6. Withdrawal of proposals will not be allowed for a period of 90 days following the opening unless approved by 791 COOP.
7. Addenda, if required, will be issued by 791 COOPERATIVE by email to the proposer's designated contact to all those vendors known to have reviewed the SOLICITATION documents through our electronic bidding software, ION Wave.

RFQ FORMAT - PROPOSERS PAY CLOSE ATTENTION TO DETAILS LISTED.

791 COOP reserves the right to waive any informality and/or reject any or all responses.

All responses should be direct, concise, complete, and unambiguous. With regard to those items that cannot be answered in the affirmative, clearly explain the precise portion to which you disagree and why you disagree.

Felony Conviction Notice (Required in Texas) -Notification of Criminal History

"A person or business entity that enters into an agreement with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony. A school district may terminate an agreement with a person or business entity if the district determines that the person or business entity failed to give notice as required 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 agreement." This notice is not required of a publicly held corporation. Texas Education Code § 44.034. See FELONY



CONVICTION NOTICE document on the “Attachments” tab. Felony conviction notice document must be uploaded to the “Response Attachments” FELONY CONVICTION NOTICE section.

References

The proposal response should contain a minimum of Fifteen (15) references of customers you have served that would be considered eligible for membership in 791 COOP (i.e. K-12 School Districts, College/Universities, and/or City/County Government Entities, Water or Fire Districts, etc.). In addition to the name of the entity, a contact name, email and phone number shall be included. The references document must be downloaded from the “Attachments” section, completed and uploaded to the “Response Attachments” REFERENCES section.

Resellers/Dealers (if applicable)

Vendors with Resellers/Dealers must provide the Resellers/Dealers document from the “Attachments” section, complete and uploaded to the “Response Attachments” RESELLERS/DEALERS section.

Vendor Certifications

Vendor certifications will include applicable D/M/WBE, HUB and manufacturer certifications for sales and service (if applicable). Certificates must be scanned and uploaded to the “Response Attachments” D/M/WBE, HUB and/or ALL OTHER CERTIFICATES section. Whether or not you are a D/M/WBE, HUB or similar business will have no bearing on the evaluation score, but provides our members the information if it is part of their entities’ policies.

There is a form that relates to all vendors that is required by Federal Regulation when federal funds are expended by a member. Vendors should complete all requested forms agreeing to comply with regulations.

Vendor Agreement

Vendor Agreement must be downloaded from the “Attachments” section, completed and uploaded to the “Response Attachments” VENDOR AGREEMENT section. If proposer has deviations to the agreement language to negotiate with 791 COOPERATIVE, the proposer must note the deviations in the vendor response submittal.

Agreement Signature Form

Agreement Signature Form must be downloaded from the “Attachments” section, completed, signed, scanned and uploaded to the “Response Attachments” AGREEMENT SIGNATURE FORM section. If proposer has deviations to the agreement language to negotiate with 791 COOPERATIVE, the agreement signature page may be submitted unsigned until all terms and conditions are agreed.

Warranty (If applicable)

Warranty documentation must be scanned and uploaded to the “Response Attachments” WARRANTY section.



Protest Procedure

If a contractor/proposer (contractor) desires to protest a process or decision by 791 COOPERATIVE, the contractor must follow the process used by Region 15 ESC.

Supplementary Catalogs and Information (If applicable)

Supplementary Catalogs and Information documentation must be scanned and uploaded to the "Response Attachments" SUPPLEMENTARY section. You may provide a link to catalogues or pricing that is published for all customers to see when shopping for your goods or services. Links to catalogue pricing must be kept current during the term of the awarded agreement. It is the intent of 791 COOP to award a manufacturer's complete line of products, when possible.

LIMITATIONS OF THE SOLICITATION AND THE USE OF AWARDED AGREEMENTS BY MEMBERS

Depending on different entities' and jurisdictions' laws and regulations, members may be prohibited from participating in one or more of the 791 COOP agreements. 791 COOP has no control over those legal restrictions and does not warrant that a member entity will be able to utilize a 791 COOP awarded agreement.



VII. Terms and Conditions

1. **Exclusivity-** Any award under this solicitation is not exclusive and 791 COOP reserves the right to multi award or not award. 791 COOP reserves the right to solicit same or similar categories again for additional awards during the life of an existing agreement with one or more awarded vendors of another solicitation, if 791 COOP decides it is in the best interest of our members.
2. **Confidentiality of RFQ** - If you believe part of your proposal is confidential and not subject to sunshine laws such as the Public Information Act, there is a form to complete to make such a declaration. Read it carefully.
3. **Best and Final Offer** – OMMITTED
4. **Non-Responsive Vendor Responses:** All submitted RFQs will be reviewed for responsiveness to the material requirements of the solicitation. A vendor response that is not materially responsive shall not be eligible for further consideration for award of the agreement. There may be required specifications for this RFQ and desired and other specifications. **IF YOUR VENDOR RESPONSE FAILS TO MEET ANY OF THE DESIGNATED REQUIRED SPECIFICATIONS, YOUR PROPOSAL SHALL BE DEEMED NON-RESPONSIVE AND WILL NOT BE EVALUATED FURTHER OR CONSIDERED FOR AWARD.**
5. **Deviations and Exceptions:** Deviations or exceptions stipulated as non-negotiable in the response by the proposer may result in disqualification if they are not acceptable to 791 COOP.
6. OMMITTED
7. **Estimated Quantities:** Because 791 COOP cannot accurately anticipate which members will utilize the awarded agreements due to the thousands of members and the different government entity types, 791 COOP makes no guarantee or commitment of any kind concerning quantities or usage of agreements resulting from this solicitation. This information, if provided, is provided solely as an aid to vendors in preparing proposals only. The successful Vendor(s) discount and pricing schedule shall apply regardless of the total cumulative volume of business under the agreement.
8. **Conditions of Agreement** - The terms and conditions of this solicitation shall control in the order that best serves the 791 COOP members' needs and deciding the controlling order is at the sole discretion of 791 COOP. The terms and conditions of this solicitation shall be incorporated by reference in a resulting agreement unless expressly agreed otherwise by the parties in writing.
9. **Name brands** – If name brands are required to be priced but other products of equal or similar type and quality may also be represented in the pricing and will be considered. 791 COOP want pricing either in a fixed price or a discount off published price or both if applicable to your proposal. A published price is defined as catalog, website, shelf or other



production of pricing for goods or services offered by the proposer.

10. Evaluation – OMMITTED

11. LIMITATION OF LIABILITY – Waiver: BY SUBMITTING A PROPOSAL, OFFERER EXPRESSLY AGREES TO WAIVE ANY CLAIM IT HAS OR MAY HAVE AGAINST BOTH 791 PURCHASING COOPERATIVE REGION 15 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 AN AGREEMENT, IF ANY. NEITHER REGION 15 ESC NOR 791 COOP SHALL BE RESPONSIBLE OR LIABLE FOR ANY COSTS INCURRED BY PROPOSERS OR THE SELECTED CONTRACTOR IN CONNECTION WITH RESPONDING TO THE SOLICITATION, PREPARING FOR ORAL PRESENTATIONS, PREPARING AND SUBMITTING A PROPOSAL, ENTERING OR NEGOTIATING THE TERMS OF AN AGREEMENT, OR ANY OTHER EXPENSES INCURRED BY A PROPOSER. THE PROPOSER OR SELECTED CONTRACTOR IS WHOLLY RESPONSIBLE FOR ANY SUCH COSTS AND EXPENSES AND SHALL NOT BE REIMBURSED IN ANY MANNER BY REGION 15 ESC OR 791 COOP.

12. RESERVATION OF RIGHTS - 791 COOP expressly reserves the right to:

- a) Reject or cancel any or all proposals;
- b) Waive any defect, irregularity or informality in any proposal or SOLICITATION procedure provided the waiver is equally applied to all Offerors and an Offeror is not prejudiced by the waiver as compared to other Offerors;
- c) Waive as an informality, minor deviations from specifications for goods or services at a lower price than other proposals meeting all aspects of the specifications if it is determined that total cost is lower and the overall function is not impaired;
- d) Reissue a SOLICITATION;
- e) Consider and accept an alternate proposal as provided herein when most advantageous to 791 COOP and its members;
- f) 791 COOP has the right to terminate the agreement for cause or no cause for convenience with a thirty-day written notice, unless otherwise agreed in writing in an executed agreement between the parties;
- g) This is not an exclusive award and no guaranteed volumes of purchases are guaranteed. 791 COOP and its members reserves the right to procure any items or services by other means at the sole discretion of 791 COOP or its members.

13) Supplemental agreements - The 791 PURCHASING COOPERATIVE Member entity participating in the 791 PURCHASING COOPERATIVE Agreement and awarded vendor may enter into a separate supplemental agreement or contract to further define the level of



service requirements over and above the minimum defined in this Agreement i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement or contract developed as a result of this Agreement is exclusively between the participating entity and awarded vendor.

791 PURCHASING COOPERATIVE, its agents, 791 PURCHASING COOPERATIVE Members and employees shall not be made party to any claim for breach of such agreement unless named and agreed by the Party in question in writing in the agreement. If a vendor submitting a Proposal requires 791 PURCHASING COOPERATIVE and/or 791 PURCHASING COOPERATIVE Member to sign an additional agreement, those agreements shall comply with the award made by 791 PURCHASING COOPERATIVE to the Vendor.

Supplemental Vendor's Agreement documents may not become part of 791 PURCHASING COOPERATIVE's Agreement with vendor unless and until an authorized representative of 791 PURCHASING COOPERATIVE reviews and approves it. 791 PURCHASING COOPERATIVE permits 791 PURCHASING COOPERATIVE Members to negotiate additional terms and conditions with the Vendor for the provision of goods or services under the Vendor's 791 PURCHASING COOPERATIVE Agreement.

- 14) **Survival Clause** - All applicable agreements, contracts, software license agreements, warranties or service agreements that were entered into between Vendor and 791 PURCHASING COOPERATIVE or the 791 PURCHASING COOPERATIVE Member Customer under the terms and conditions of this Agreement shall survive the expiration or termination of this Agreement. All Orders, Purchase Orders issued or contracts executed by 791 PURCHASING COOPERATIVE or a 791 PURCHASING COOPERATIVE Member and accepted by the Vendor prior to the expiration or termination of this agreement, shall survive expiration or termination of the Agreement, subject to previously agreed terms and conditions agreed by the parties or as otherwise specified herein relating to termination of this agreement.
- 15) **Smoking** - Persons working under Agreement shall adhere to the 791 PURCHASING COOPERATIVE Member's or local smoking statutes, codes or policies.
- 16) **Novation** - If awarded vendor sells or transfers all assets or the entire portion of the assets used to perform this Agreement, a successor in interest must guarantee to perform all obligations under this Agreement. A simple change of name agreement will not change the Agreement obligations of awarded vendor.
- 17) **Licenses** - Awarded vendor shall maintain in current status all federal, state and local licenses, bonds and permits required for the operation of the business conducted by awarded vendor. Awarded vendor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of goods or services under the Agreement. 791 PURCHASING COOPERATIVE and TIS Members reserves the right to stop work and/or cancel Agreement of any awarded vendor whose license(s) expire, lapse, are suspended or terminated subject to a 30-day cure period unless prohibited by



applicable statute or regulation.

- 18) 791 PURCHASING COOPERATIVE Member Purchasing Procedures** - Purchase orders or their equal are issued by participating 791 PURCHASING COOPERATIVE Member to the awarded vendor and should indicate on the order that the purchase is per the applicable 791 PURCHASING COOPERATIVE Agreement number. Orders are typically emailed to 791 PURCHASING COOPERATIVE at admin@791COOP.org
- Awarded vendor delivers goods/services directly to the participating member.
 - Awarded vendor invoices the participating 791 PURCHASING COOPERATIVE Member directly.
 - Awarded vendor receives payment directly from the participating member.
 - Awarded vendor reports sales monthly to 791 PURCHASING COOPERATIVE (unless prior arrangements have been made with 791 PURCHASING COOPERATIVE for an alternative submission schedule).
- 19) Incorporation of Solicitation** - The 791 Purchasing Cooperative Solicitation, whether a Request for Proposals, the Request for Competitive Sealed Proposals or Request for Qualifications solicitation, or other, the Vendor's response to same and all associated documents and forms made part of the solicitation process, including any addenda, that resulted in the execution of this agreement are hereby incorporated by reference into this agreement as if copied verbatim.
- 20) State of Texas Franchise Tax:** By signature hereon, the bidder hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code.
- 21) 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.
- 22) New Technology and Products:** New products that meet the scope of work may be added to the existing contract. Pricing shall be equivalent to the percentage discount of other products. Vendor may replace or add product lines to an existing contract if the line is replacing or supplementing products on contract, is superior to the original products offered, is discounted in a similar or to a greater degree and/or if the products meet the requirements of the original solicitation. No products may be added to avoid competitive procurement procedures. 791 PURCHASING COOPERATIVE may reject any additions, without cause
- 23) Disclosures:** Vendor affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity,



special discount, trip, favor or service to a public servant in connection with this contract.

CERTIFICATIONS OF OFFER AND SIGNATURE IMMEDIATELY FOLLOWING

VIII. CERTIFICATIONS OF OFFEROR

I hereby certify that the information contained in this proposal and any attachments is true and correct and may be viewed as an accurate representation of proposed services to be provided by this organization. I have noted any exceptions to the RFP in my organization’s response. I acknowledge that I have read and understand the requirements and provisions of the Request for Proposal and that the organization will comply with the regulations and other applicable local, state, and federal regulations and directives in the implementation of this Contract.

I also certify that I have read and understood all sections of this Request for Proposals and will comply with all the terms and conditions as stated; and furthermore that I, _____ (typed or printed name) certify that I am the _____ (title) of the corporation, partnership, or sole proprietorship, or other eligible entity named as Offeror and Respondent herein and that I am legally authorized to sign this offer and to submit it to the Region 15 Education Service Center, on behalf of said Offeror by authority of its governing body. I am binding my organization to the terms set forth in this agreement with Region 15 ESC. I understand that there is a separate vendor agreement with 791 Purchasing Cooperative. The vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this contract.

Name of Organization/Contractor(s): _____

Signature of Authorized Representative: _____

Required

Name of Authorized Representative: _____

Title of Authorized Representative: _____

Date: _____

IX. Submission of Qualifications

Please upload your **Request for Qualifications** Response submittal document in PDF format to ION Wave software at: <https://791COOP.ionwave.net>



791 COOP leaves it to the Respondent to design their presentation to prove their qualifications sufficient to be awarded according to the specifications, evaluation criteria and other instructions in the RFQ.