



## **Goodbuy Purchasing Cooperative General Terms and Conditions**

### **A. General Provisions**

#### **1. Bid Preparation and Submission Procedures**

Sealed (encrypted) bids will be received until the deadline indicated in the Notice of Invitation to Bid. Each bid must be submitted via the Program's bid submission software. Bids received by any other method will not be considered. A representative of the Bidder who is authorized to enter into contracts on behalf of the Bidder must create an account on the Program's online bid submission software. Failure to respond to requested information as part of the bid may result in the rejection of the entire bid.

Bidders or their authorized representatives are expected to fully educate themselves as to the terms, conditions, requirements, and specifications of the Bid Invitation, including these General Terms and Conditions, before bid submittal. Failure to do so will be at the Bidder's own risk. The law makes no allowance for errors of omission or commission on the part of Bidders; furthermore, the Bidder cannot secure relief on the plea of error or ignorance concerning any requirement included in the Bid Invitation.

Bidders are welcomed to attend the bid opening at the date and time indicated in the Notice of Invitation to Bid, but Bidder presence is not required, and no weight or other consideration toward any award decision will be given to any Bidder's attendance or absence at the bid opening. Recaps of the details of the bids received will be available to any interested party upon WRITTEN request. The form and content of the bid recaps will be at the sole discretion of the management and staff of the Program and may be in electronic form.

Unless otherwise specified, you may bid on any or all items. Answer all questions related to each item on which you wish to bid. For items you do not wish to bid on, you may simply leave the questions for that item unanswered (blank), or you may enter "No Bid" or "N/B." Items will be considered individually and awards will be made on each item independently, except for "related" items for which "compatibility" will be an element of consideration. In such cases, small groups of items will be considered as a unit.

Small and Minority Firms, Women's Business Enterprises, and Labor Surplus Area firms are especially encouraged to submit bids.

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

These General Terms and Conditions are applicable to all Bid Invitations issued by the Program, and by this inclusion, they become an integral part of any contract which is awarded, or Purchase Order which is issued in association with this Bid Invitation.

#### **3. General Provisions and Definitions**

The term "Program" means the Goodbuy Purchasing Cooperative and its management and staff.

The term "Member" means any member of the Program and the member's management and staff.



The term “Bidder” means the business or entity submitting a bid to the Program and, if awarded, providing goods and services through the Program to Members.

The term “Parties” means the Program and the Bidder.

The term “contract” means the comprehensive collection of:

- a) the General Terms and Conditions, including any attachments and or amendments, and all other forms and information collection pages included with this Bid Invitation;
- b) the Item Specifications included in the Bid Invitation and any subsequent addenda thereto;
- c) the Bidder’s response to the Bid Invitation;
- d) the Bidder’s Notice of Award document; and
- e) any additional terms, conditions, or instructions contained in each individual Purchase Order issued by any member(s) of the Program.

Collectively, these documents represent the entire agreement between the Parties.

The term “Purchase Order” means a purchase order issued by a Member to the Bidder to order goods or services pursuant to this contract.

The section titles contained in this General Terms and Conditions document are for convenience and reference only, and in no way define, describe, extend, or limit the scope or intent of the provisions of any section of this document.

Unless otherwise stated, any listing of factors or criteria in this document does not constitute an order of preference or importance.

#### **4. Contract Time Period and Successors and Assigns**

The time period for purchases covered by any contract resulting from any award under this bid is stated in the Notice of Invitation to Bid. Unless otherwise indicated in these General Terms and Conditions, all bid pricing will be firm through the entire contract period.

In the event this contract expires before another bid is awarded, upon the mutual written agreement of the Parties, this contract may be extended on a month to month basis beyond the expiration of the contract time period.

The transfer, assignment, or subcontracting of contracts is prohibited, and the Bidder agrees not to sell, assign, transfer, convey, or subcontract any portion of any contract resulting from this Bid Invitation without the prior written consent of the Program. Any contract resulting from any award under this bid shall be binding upon and shall inure to the benefit of the parties and their successors and permitted assigns. If the Bidder is acquired, sold, merged, or otherwise reorganized, the Bidder shall provide notice of such change to the Program in writing.

#### **5. Addendum**

In the event that any changes to this Bid Invitation occur, the changes or corrections to this Bid Invitation will be made by addendum, and any updated information contained in



any addendum will prevail over the information contained in the original Bid Invitation or any previous addendum. Each entity who received a copy of this Bid Invitation will be notified of any addendum to this Bid Invitation via our online bid submission software. The Program is the sole authority for the issuance of any addendum related to this bid. Any communications from any person or entity other than the Program regarding any matters related to this bid are invalid and will have no influence on this Bid Invitation.

## **6. Specifications (line item bids only, not applicable on catalog discount bids)**

Catalog numbers, brand names, or manufacturer's product or reference numbers used in the item specifications are intended to be descriptive, not restrictive. These references, as well as "approved brands" listed, are intended to identify and indicate the type of product being sought, and establish the level of quality desired. If any conflict exists in the item specifications between the product descriptions and any brand names or model or reference numbers used, the product descriptions will override the brand names or model number references.

In most cases, bids on brands of equivalent nature and quality will be considered, provided they are regularly produced products from a reputable manufacturer. However, in some cases, the Program may find it advantageous to standardize equipment and/or supplies by manufacturer in order to achieve efficiencies in procurement, repair, and operation, to match existing stock, or to satisfy other requirements. In these cases, preference will be given to the specific products identified as "approved brands," especially if all other evaluation factors are deemed to be equal.

For this reason, where specific brands or models are identified, it is preferable for the Bidder to bid on the exact item specified, in addition to an alternate brand or model where desired.

All bids must identify the manufacturer, brand, model, etc. of the article being offered. For bids on "or equal/equivalent" items other than any "approved brand" specified, the Bidder must supply a complete description and sufficient data for the Program to properly analyze the product being bid. Samples may be requested for items other than "approved brands."

If the Bidder fails to identify the manufacturer, brand, model, etc. for any item being bid on, the Program will assume the Bidder is bidding on the exact brand and model identified in the specification, and if awarded, the Bidder will be required to supply the exact brand names, models, etc. as specified. Substitutions will not be allowed.

The apparent silence of the specifications as to any detail or the apparent omission from any specification of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices shall prevail. All interpretations of the specifications shall be made on the basis of this statement.

If the Bidder discovers or suspects an error in the item specifications in this Bid Invitation, please note it as part of the Bidder's bid response. The Program will attempt to correct errors for future Bid Invitations.



## **7. Bid Evaluation and Award**

All bids received in response to this Bid Invitation which are submitted in accordance with the instructions and restrictions contained in section #1 of this General Terms and Conditions document entitled “Bid Preparation and Submission Procedures” will initially be considered for award; however, initial consideration of any bid will not constitute an assessment of its meeting the necessary qualifications, and any bid may be disqualified at any time during the process of evaluating bids for failure to meet any other terms or conditions contained anywhere else in the Bid Invitation.

The Program reserves the right to waive any or all bidding irregularities, formalities, or other technicalities, to be the sole and independent judge of quality and suitability of any products offered, and may accept or reject any bid in its entirety, or may reject any part of any bid without affecting the remainder of that bid, and may award the individual items on this bid in any combination or in any way to best serve the interests of its members as it perceives those interests to be in its sole discretion.

It is not the policy of the Program to purchase on the basis of low bid price alone. All bid items are subject to evaluation and approval by a committee composed of Members. In evaluating the bids received and determining to which bidder(s) (if any) to award a contract, the Program may consider any combination of the following criteria: (1) the purchase price; (2) the reputation of the Bidder and of the Bidder's goods and/or services; (3) the quality of the Bidder's goods and/or services; (4) the extent to which the goods and/or services meet the needs of the Members; (5) the Bidder's location and service and delivery capabilities; (6) the Bidder's past performance with the Members; (7) student preferences; (8) the warranties offered and the Bidder's warranty service history; (9) the probability of continuous availability of the goods and/or services offered; (10) the impact on the ability of the Members to comply with any applicable laws or rules, including those relating to the utilization of historically underutilized businesses; (11) the total long-term cost to the Program Members to acquire the Bidder's goods and/or services; and (12) any other relevant factor that a public or private entity could consider in selecting a vendor.

The Program, through its management and/or its Members, may use all means at their collective disposal to evaluate the bids received on these criteria, and the final decision as to the best overall offer, both as to price and to suitability of the products and/or services offered to fit the needs of the Members, will rest solely with the Board of Directors for Education Service Center, Region 2, which may be delegated at the Board's discretion.

Unless otherwise indicated in this Bid Invitation, “all or nothing” bids are not acceptable and will be rejected. The Bidder must be willing to accept a partial award for any combination of the items and/or services bid, and must be willing to share the business with any other successful bidders.

The successful bidder(s) will be notified by “Notice(s) of Award” issued by the management of the Program.

The Program and/or its members, as a whole or individually, reserve the right to require a performance bond as it is deemed necessary.



*B. Performance*

**8. Quantities**

Quantities reflected in this Bid Invitation are estimates based upon the combined projected needs for participating Members during the contract period. Quantities are the best estimate of anticipated needs available at the time of publication of this Bid Invitation, but the accuracy of these estimated quantities may be affected by numerous factors including, but not limited to, budgetary adjustments, student participation, availability of government commodities or other subsidies, changing market forces, unintentional errors or omissions, and changes in Program participation. Actual needs may be greater or less than the estimated quantities provided.

Unless otherwise specified by the bidder, the Program as a whole, and its individual Members, will be allowed to purchase up to twenty-five percent (25%) more or up to twenty-five percent (25%) less than the estimated quantities for any item and still obtain the item at the bid price.

The Bidder will be notified of significant changes in the estimated quantities as they become known throughout the contract period.

The Bidder will be required to monitor consumption rates and bring any exceptions to the attention of the Program management as soon as possible. The Program will communicate slow-moving items to its members if notified by the Bidder. Except for conditions discussed within section #23 of this document entitled "Force Majeure," the Bidder is required to maintain sufficient inventories to cover the needs of Members with only minimal, occasional, and temporary inability to provide products on a timely basis. The Bidder at the close of the contract period agrees not to hold the Program or its Members liable for any inaccuracies in estimated quantities or for any products on hand.

**9. Packaging**

Unless otherwise provided for in this Bid Invitation, all products supplied under any contract resulting from this Bid Invitation must be packaged in containers that are new, appropriately designed for the products involved, and sturdy enough to protect the products involved in loading, transit, unloading, and storage. Any products supplied under any contract resulting from this Bid Invitation for which palletizing is appropriate must be delivered on standard 48" 4-way pallets in good, serviceable condition.

**10. Pricing**

All "Line Item" Bids must be for a specific price for the unit of measure specified for that item. The Bidder is responsible for clearly noting any differences in proposed packaging and/or units of measure in the bid response, and the Bidder shall understand that if the item in question is awarded to the Bidder, the quantity specified for that item will be adjusted to achieve an approximately equivalent amount of the product.

In cases where another price is requested for comparison purposes (e.g., "portion price" or "price per ounce"), such price is for comparison purposes only. Purchases will be made in increments of the unit of measure specified. In the case of any



discrepancy or error in comparison price calculations, the price for the unit of measure specified will prevail. Excessive errors in comparison price calculations will be sufficient grounds for rejection of the entire bid.

“Discount from Catalog” Bid Invitations are percent of discount offered on list price for items in the Bidder’s published catalog and/or price list listed in the bid response.

“Cost Plus” bids will not be accepted unless otherwise requested in this Bid Invitation.

Bid prices must be firm for acceptance for at least 90 days from bid opening date, unless otherwise specified in this Bid Invitation or in the Bidder’s response.

If during the term of the contract, the Bidder’s net prices to any or all of its other customers in similar market circumstances for any of the same items awarded under this Bid Invitation are reduced below the contracted price, it is understood and agreed that the benefits of such price reduction shall be extended to all Members.

## **11. Sales Tax**

The Members are, for the most part, public entities that are exempt from sales, excise, and use taxes. Tax Exemption Certificates will be provided by each Member upon individual requests from the Bidder. Unless otherwise specified in this Bid Invitation, sales tax will not be included in any bid response or invoice submitted by the Bidder unless the Bidder has requested a Tax Exemption Certificate from the individual Member in writing and failed to receive the same within a reasonable period of time. The Limited Sales, Excise, and Use Tax Laws recognize the inclusion of tax exemption information as part of a Purchase Order to be as binding as if it had been submitted separately, and by responding to this Bid Invitation, the Bidder agrees to accept tax exemption information in such form.

## **12. Delivery and Transportation**

Unless otherwise noted in these General Terms and Conditions or the Purchase Order, or unless prior approval has been obtained from the Member placing the order, all deliveries shall be made between the hours of 8:00 A.M. through 11:30 A.M. and 1:30 P.M. through 3:30 P.M. (4:30 P.M. for members other than school districts), Monday through Friday, holidays excepted.

Unless otherwise noted in this Bid Invitation or in the Purchase Order, the Bidder must deliver products awarded under this Bid Invitation within ten (10) working days after receipt of a Purchase Order. The Bidder must immediately notify the primary contact person at the Member placing the order, by telephone and/or fax, if any delays occur. The Member placing the order will have the option to cancel the order if it is unable to accept the delay. At the discretion of the Member placing the order, items received after the due date, for which the Member has not been notified regarding the delay, may be returned at the Bidder’s expense with no penalty to the Member.

Repeated failure to meet delivery dates will constitute a breach of contract by the Bidder, and may result in the initiation of actions covered in section #22 of this General Terms and Conditions document entitled “Remedies for Non-Performance of Contract, and Contract Termination” and the associated financial impacts attached thereto, as





well as jeopardize any future business from the Program.

All freight, delivery, and handling charges are the responsibility of the Bidder, and all bid prices must be quoted freight prepaid, F.O.B. destination, and shall include all freight, delivery, and handling charges, including unloading and inside deliveries where required.

Cartons must be marked as indicated on the Purchase Order. Each shipment must include a packing list and waybill or delivery ticket.

If the Bidder is delivering products out of more than one warehouse or distribution center, all warehouses or distribution centers involved in the distribution plan **MUST** carry or have timely access to all awarded items and **MUST** be able to respond to orders in a timely manner. Unless otherwise specified in this Bid Invitation, product substitutions are not allowed, and the involvement of multiple distribution centers will not be construed as to alter the restrictions against product substitutions. In the event the Bidder uses multiple distribution centers, the Program and its Members will have **ONE CONTACT PERSON** for overall contract management relative to any contract resulting from any award under this Bid Invitation, and the Program and its Members **WILL NOT** be required to deal with multiple contacts from the Bidder for overall contract management.

When the needs of the Member require immediate response, the right to pick up products awarded under this Bid Invitation on an “over the counter” basis must be available for the majority of the items awarded to a Bidder. Under such circumstances, the Member’s personnel may pick up products at the Bidder’s warehouse location at the bid price with no minimum purchase required.

Except for items that have hidden defects or that do not meet specifications, title to all products shall pass to the Member upon receipt and acceptance at the time of delivery.

### **13. Quality**

Unless otherwise indicated in the Bid Invitation, all items bid must be new and in first class condition and must conform to the highest standards of manufacturing practice, including containers suitable for shipment and storage. Unless otherwise requested, the Program will not accept “factory seconds” or otherwise inferior goods, and reserves the right to return any such item(s) within thirty (30) days of receipt at Bidder’s expense.

All electrical items must meet all applicable OSHA standards and regulations, and must bear the appropriate listing from US, FMRC, NEMA, or U L Laboratories.

Materials Safety Data Sheets (MSDS) on chemicals or any other products customarily requiring MSDS Sheets must be provided for each ordering Member. MSDS Sheets must be delivered along with the first shipment to each individual Member within the contract period. Additional MSDS Sheets must be provided in a timely manner at no charge upon request from any participating member of the Program.



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

All products supplied under this contract should arrive in the best possible condition and will be subject to inspection, testing, and approval by the Program and/or its Members. Tests may be performed on any samples submitted as part of the bidding or evaluation process, or on samples taken from any regular shipment.

In the event any product tested fails to meet or exceed all requirements of the bid item specifications or the General Terms and Conditions of the Bid Invitation, the cost of the samples used and the cost of the testing shall be borne by the Bidder, and upon notification to the Bidder, the defective product(s) will be picked up and replaced by the Bidder within five (5) business days or on the next service date, whichever is sooner, without charge for the replacement(s) or delivery. Defective products which are not picked up and replaced by the Bidder as outlined above may be disposed of by the Member without expense to the Program or its Member. Repeated incidents of delivery of products that fail to pass product inspection and/or testing by the Bidder will warrant cancellation of the contract in addition to the remedies outlined above. Furthermore, future business from the Program could be jeopardized.

Products damaged in shipment will be considered as defective products and will be subject to the same remedies outlined above.

The failure of any consumable products (food items) to meet specifications or acceptable chemical or bacterial levels may result in cancellation of the contract in addition to the remedies outlined above. Furthermore, future business from the Program could be jeopardized. All products in the Member's warehouse at the time of any such cancellation must be picked up and credit issued to the Member.

Latent defects discovered after delivery and acceptance of any products may result in revocation of the acceptance.

The Program shall have access to the Bidder's place of business during normal business hours for the purpose of inspecting merchandise.

#### **15. Samples**

If samples are needed for bid evaluation, they will be requested as part of the Bid Invitation or in a separate communication. Unless otherwise indicated in the request for the samples, the samples must be received by the Program within 72 hours from the time of the request.

Samples must be furnished free of expense to the Program. Samples must be labeled with Program Bid Name and Number, Item Number, Product Identification Number(s), and the name of the Bidder. Do not include samples with the bid response unless otherwise instructed in the Bid Invitation.

All samples will be retained by the Program for a sufficient length of time for proper evaluation. If not destroyed or consumed during examination or testing, samples will be returned to the Bidder at the Bidder's expense, but only upon written request submitted with the samples at the time the samples were submitted. However, notwithstanding the above, samples from the successful Bidder may be retained





permanently by the Program for the purpose of determining that the quality and workmanship of the delivered items are comparable to the samples. The Program shall incur no liability for any samples that are damaged, destroyed or consumed during examination or testing.

Failure by the Bidder to submit samples when requested will result in the items in question not being considered for award to the Bidder.

## **16. Warranties**

By submission of a bid, the Bidder warrants that the Bidder is an authorized dealer, distributor, or manufacturer for the product(s) being offered, that all items being bid conform to the specifications for which the items are being offered, and that all items supplied under any contract related to this Bid Invitation will be free from all defects in material, workmanship, and title.

A minimum of ninety (90) days product guarantee or the manufacturer's standard commercial warranty, whichever is greater, shall apply to all products purchased under this Bid Invitation. This warranty shall provide for replacement of defective merchandise, parts, and labor, and shall include pick-up of the defective merchandise from the specified Member's location and delivery of the replacement(s) to the same location. The warranty shall be effective from the date of acceptance of the merchandise.

## **17. Withdrawal or Modification of Bid**

Subject to the restrictions discussed below, a bid submitted to the Program can be withdrawn ONLY IN ITS ENTIRETY, and ONLY UNTIL THE DUE DATE AND TIME FOR BID SUBMISSION as stated in the Notice of Invitation to Bid included with this Bid Invitation. A representative of the Bidder who is authorized to enter into contracts on behalf of the Bidder must log on to our online bid submission software to withdraw. No bid may be withdrawn after the date and time that bids are due as specified in the Notice of Invitation to Bid.

If the Bidder withdraws a bid, the Bidder may resubmit the bid, or submit a new bid, up until the due date and time for bid submission as stated in the Notice of Invitation to Bid included with this Bid Invitation, provided any new submission meets all the qualifications of bid submission included in these General Terms and Conditions.

All bids in the possession of the Program at the time bids are due shall be deemed final, conclusive, and irrevocable, and no bid shall be subject to withdrawal, amendment, or correction after the due date and time for bid submission as stated in the Notice of Invitation to Bid included with this Bid Invitation.

## **18. Substitutions**

The Program will not accept any substitutes after item(s) have been awarded as specified, unless such substitutions are deemed to be in the best interest of the Members, and unless prior agreements have been reached and reduced to writing regarding such substitutions. Substituting without the prior approval of the Member placing the order will constitute a breach of contract by the Bidder which may result in



the initiation of actions covered in section #22 of this General Terms and Conditions document entitled “Remedies for Non-Performance of Contract, and Contract Termination” and the associated financial impacts attached thereto, and may jeopardize any future business from the Program.

#### **19. Deviations from Item Specification or General Terms and Conditions**

Any and all limitations, exceptions, qualifications, special conditions, or deviations from these General Terms and Conditions or any of the item specifications, including the offering of any alternate to the “approved brand and/or model” (where identified) must be clearly noted in detail by the Bidder at the time of submission of the bid. The absence of such limitations, exceptions, qualifications, special conditions, or deviations being submitted in detail with the Bidder’s response will hold the Bidder accountable to the Program and its members to perform in strict accordance with all these General Terms and Conditions and all the item specifications as written, including any “approved brands and/or models” identified. The Bidder should be aware that the submission of any such limitations, exceptions, qualifications, special conditions, or deviations with the bid response may place the Bidder at a competitive disadvantage or otherwise prevent the Program from considering the bid on the affected item(s).

Any deviation from any of the item specifications, including the delivery of any product other than the specific brand and model of the product awarded, will be grounds for rejection of the product(s) when delivered, and will expose the Bidder to the remedies identified in section #22 of this General Terms and Conditions document entitled “Remedies for Non-Performance of Contract, and Contract Termination” and may jeopardize future business from the Program.

#### **20. Contracts and Purchase Orders**

A response to this Bid Invitation is an offer to contract with the Program and its Members based upon the Item Specifications and the General Terms and Conditions contained in the Bid Invitation. Bids do not become contracts unless and until they are both accepted by the Program through an Award Notice to the Bidder, and put into effect by the issuance of a Purchase Order(s) signed by an authorized representative of a participating Member. Purchase Orders will be delivered directly to the Bidder. All deliveries and financial transactions will occur directly between the Bidder and the Members.

#### **21. Invoices, Packing Lists, and Payment**

Packing lists or other suitable shipping documents must accompany each shipment and must identify (a) the name and address of the Bidder, (b) the name and address or delivery location of the receiving entity, (c) the Purchase Order number, and (d) detailed descriptive information identifying the item(s) delivered, including quantity, item number, product code, item description, number of containers, etc.

All invoices must reflect (a) the name and address of the Bidder, (b) the name and address or delivery location of the receiving entity, (c) the appropriate Purchase Order number, and (d) detailed descriptive information identifying the item(s) delivered, including quantity, item number, product code, item description, etc., and must include a properly signed copy of the delivery receipt. Invoices must be mailed directly to the



ordering Member.

The Members will not be held responsible for any products delivered or invoiced without a valid current Purchase Order number.

The Program cannot control the payment terms adopted and/or followed by its individual members; however, the Program does attempt to remind its members of the importance of following prompt payment policies. Notwithstanding the above, the payment terms stated on each individual Purchase Order will be the controlling factor in the determination of payment terms. Each Invoice should include the Bidder's normal payment terms in the event that any Purchase Order fails to address the subject.

In any case, payment will be made only after satisfactory delivery and acceptance of merchandise in good order, including the necessary documentation indicated above, and only after receipt of a correct Invoice from the Bidder, including the necessary information indicated above.

At the option of the Member, invoices with incorrect prices or other errors or inconsistencies will not be paid until corrected, whether by credit memo(s) or issuance of a corrected invoice. At the option of the Member, invoices may be corrected upon receipt and payment may be made based upon their corrections.

No term in this contract shall be construed to conflict with the Texas Prompt Payment law, Texas Government Code, Chapter 2251, which shall govern the payment by Members to Bidders, to the extent such Members are covered by the law.

## **22. Remedies for Non-Performance of Contract, and Termination of Contract**

If the Bidder cannot comply with the terms and conditions in fulfilling its contract as anticipated, the Bidder must supply the same products or services contracted from other sources at the contract price. The Bidder's delay in the above will constitute the Bidder's material breach of contract, whereupon the Program may terminate the Bidder's contract for cause as provided by the remainder of this section.

Unless this contract is extended by mutual agreement of the Parties on a month to month basis beyond the expiration of the contract time period as stated in the Notice of Invitation to Bid, this contract shall terminate upon the expiration of the contract term as stated in the Notice of Invitation to Bid.

If any delay or failure of performance is caused by a Force Majeure event as described in section #23 of this General Terms and Conditions document entitled "Force Majeure," the Program may, in its sole discretion, terminate this contract in whole or part, provided such termination follows the remaining requirements of this section.

Except as otherwise provided for within the General Terms and Conditions of this document, this contract may be terminated in whole or in part by either Party in the event of substantial failure by the other Party to fulfill its obligations under this contract through no fault of the terminating Party; provided that no such termination may be implemented unless and until the other Party is given (1) at least ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and



(2) an opportunity for consultation with the terminating Party, followed by a reasonable opportunity, of not more than ten (10) working days, to rectify the defects in products or performance, prior to termination.

Valid causes for termination of this contract will include, but are not limited to:

- a) the Bidder's failure to adhere to any of the provisions of the General Terms and Conditions of this Bid Invitation;
- b) the Bidder delivering any product(s) that fails to meet the Item Specifications included in this Bid Invitation relating to the awarded product(s);
- c) the Bidder delivering any substitution(s) of product(s) different than those originally bid and awarded without the prior written approval of the Member placing the order;
- d) the Bidder's failure to meet the required delivery schedules as identified in the contract documents; or
- e) the Bidder's violation of any other provision contained within these General Terms and Conditions or any attachment thereto which provides for contract termination as a remedy.

Notwithstanding anything contained in this section, in the event of the Bidder's breach of any provision in this contract, the Program reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of its Members, including, but not limited to, the purchase of other products of like type and quality from other sources in the open market. In the event the Program elects to purchase other products from other sources, the Program will invoice the Bidder for any increased costs to the Program or its Members, and the Bidder agrees, by submission of a bid response, to promptly pay any such charges invoiced. In the event the Program terminates this contract, in whole or in part, for any reason provided for within the contract, the Program reserves the right to award the canceled contract, or any portion thereof, to the next lowest or best bidder as it deems such award to be in the best interest of its Members.

Any contract termination resulting from any cause other than a Force Majeure event will be deemed valid reason for not considering any future bids from the defaulting Bidder.

In the performance of this contract, time is of the essence and these General Terms and Conditions are of the essence.

## **23. Force Majeure**

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

The Parties to this contract will be required to use due caution and preventive measures to protect against the effects of Force Majeure, and the burden of proving that Force Majeure has occurred shall rest on the Party seeking relief under this section. The Party seeking relief due to Force Majeure will be required to promptly



notify the other Party in writing, citing the details of the Force Majeure event, and will be required to use due diligence to overcome obstacles to performance created by the Force Majeure event, and shall resume performance immediately after the obstacles have been removed, provided the contract has not been terminated in the interim.

Delay or failure of performance, by either Party to this contract, caused solely by a Force Majeure event shall be excused for the period of delay caused solely by the Force Majeure event, provided the affected Party has promptly notified the other party in writing. Neither Party shall have any claim for damages against the other resulting from delays caused solely by Force Majeure.

Neither the Program nor its Members will be responsible for any costs incurred by the Bidder because of the Force Majeure event unless the Program or its Member has requested, in writing, that the Bidder incur such costs in connection with any delay or work stoppage caused by the Force Majeure event, and the Program has agreed in such writing to incur such additional costs.

Notwithstanding any other provision of this section, in the event the Bidder's performance of its obligations under this contract is delayed or stopped by a Force Majeure event, the Program shall have the option to terminate this contract in accordance with section #22 of this General Terms and Conditions document entitled "Remedies for Non-Performance of Contract, and Contract Termination." Furthermore, this section shall not be interpreted as to limit or otherwise modify any of the Program's rights as provided elsewhere in this contract.

## **24. Non-Collusion Certification**

By signing this bid, the Bidder certifies that, to the best of his/her knowledge:

- a) neither the Bidder nor any business entity represented by the Bidder has received compensation for participation in the preparation of the item specifications or the General Terms and Conditions related to this Bid Invitation;
- b) this bid or proposal has been arrived at independently and is submitted without collusion with any other bidder, with any competitor or potential competitor, or with any other person or entity to obtain any information or gain any special treatment or favoritism that would in any way limit competition or give any bidder an unfair advantage over any other bidder with respect to this bid;
- c) the Bidder has not accepted, offered, conferred, or agreed to confer, and will not in the future accept, offer, confer, or agree to confer, any benefit or anything of value to any person or entity related to the Program or Members in connection with any information or submission related to this bid, any recommendation, decision, vote, or award related to this bid, or the exercise of any influence or discretion concerning the sale, delivery, or performance of any product or service related to this bid;
- d) neither the Bidder, nor any business entity represented by the Bidder, nor anyone acting for such business entity, has violated the Federal Antitrust Laws or the antitrust laws of this State with regard to this bid, and this bid or proposal has not been knowingly disclosed, and will not be knowingly disclosed to any other bidder, competitor, or potential competitor prior to the opening of bids or proposals for this project; and
- e) no attempt has been or will be made to induce any other person or entity to submit



or to not submit a bid or proposal.

The person signing this bid or proposal certifies that he/she has fully informed himself/herself regarding the accuracy of the statements contained in this certification.

## **25. Assignment - Delegation**

No responsibility or obligation created by this contract shall be assigned or delegated by the Bidder without written permission from the Program. Any attempted assignment or delegation by the Bidder shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

## **26. Certifications Regarding Legal, Ethical, and Other Matters**

By signing this bid, the Bidder certifies that:

- a) the Bidder has read and understands all the General Terms and Conditions in this document, and agrees to be bound by them, and the person signing this bid is authorized to submit bids on behalf of the Bidder;
- b) the Bidder has noted any and all relationships that might be conflicts of interest and included such information with his/her bid response;
- c) the bid submitted conforms with all item specifications, these General Terms and Conditions, and any other instructions, requirements, or schedules outlined or included in this Bid Invitation;
- d) if this bid is accepted, in whole or in part, the Bidder will furnish any item(s) awarded to them under this Bid Invitation to the Members at the price bid, and in accordance with the item specifications and the terms and conditions contained in this Bid Invitation;
- e) the Bidder has, or has the ability to obtain, such financial and other resources, including inventories, as may be required to fulfill all the responsibilities associated with this bid;
- f) the Bidder has a high degree of integrity and business ethics, and a satisfactory record of performances, and has not been notified by any local, state, or federal agency with competent jurisdiction that its standing in any matters whatsoever would preclude it from participating in this bid, it would in no other way whatsoever be disqualified to bid or receive any award or contract related to this bid, and the Bidder will comply with any reasonable request from the Program to supply any information sufficient to substantiate the Bidder's ability to meet these minimum standards;
- g) concerning paragraph "f)" above, the Bidder has identified and disclosed in this written bid response any and all known or suspected matters that would disqualify it from participating in this bid or receiving any award or contract related to this bid, recognizing that the Bidder's failure to identify and disclose any such matters constitutes its affirmation that no such matters exist;
- h) the Bidder has obtained, and will continue to maintain during the entire term of this contract, all permits, approvals, or licenses, necessary for lawful performance of its obligations under this contract;
- i) the prices, prompt payment discount terms, delivery terms, distribution allowances, and the quality and/or performance of the products offered in the bid response are and will remain the same or better than those offered to the Bidder's most favored customer under equivalent circumstances;





- j) the Bidder will comply with all laws relating to intellectual property, will not infringe on any third party's intellectual property rights, and will indemnify, defend, and hold the Program and its Members harmless against any claims for infringement of any copyrights, patents, or other infringements related to its activities under this contract;
- k) the bid submitted complies with all federal, state, and local laws concerning these types of products or services, and the Bidder will continue to comply with any applicable federal, state, and local laws related to the Bidder's activities in connection with this contract;
- l) the Bidder will maintain, at the Bidder's expense, any insurance necessary to protect the Program and its Members from all claims for bodily injury, death, or property damage that might arise from the performance by the Bidder or the Bidder's employees or its agents of any service required of the Bidder under this contract; however, the existence of such insurance will not relieve the Bidder of full responsibility and liability for damages, injury, death, or loss as described or as otherwise provided for by law;
- m) neither the Program nor any of its Members shall be liable to the Bidder for any damages (including, but not limited to, loss of profits or loss of business, or any special, consequential, exemplary, or incidental damages) in the event that the Program declares the Bidder in default; and
- n) the Bidder understands that the inclusion of any false statement in this bid application may result in bid disqualification and, if awarded, such false statement(s) constitute a material breach of contract which will void the submitted bid or any resulting contracts, and subject the Bidder to removal from all bid lists, and possible criminal prosecution.

Unless otherwise provided for in this Bid Invitation, any written notice or other communication required by this bid or by law will be conclusively deemed to have been given and received on the second business day after such written notice has been deposited in the U. S. Mail, properly addressed, and with sufficient postage affixed thereto, provided such notice shall not prevent the giving of actual notice in any other manner.

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

The Bidder agrees that during the period of any contract resulting from any award under this Bid Invitation, the Bidder will comply with all applicable equal employment opportunity laws and regulations, including, but not limited to an agreement not to deny any benefit to, exclude from any opportunity, or discriminate in any way against, any applicant, employee, or any other person because of age, color, creed, gender, handicapping condition, marital status, national origin, political affiliation or belief, race, religion, or veteran status.

The Bidder further agrees that the Bidder is and, during the period of any contract resulting from any award under this Bid Invitation will remain, in compliance with Executive Order 11246, entitled "Equal Employment Opportunity" as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41CFR Part 60).

The occurrence of any prohibited discrimination will constitute the Bidder's breach of contract due to a substantial failure by the Bidder to fulfill its obligations, whereupon the



Program may terminate the Bidder's contract for cause as provided by section #22 of this General Terms and Conditions document entitled "Remedies for Non-Performance of Contract, and Contract Termination."

**28. Venue**

This contract will be construed and governed according to the laws of the State of Texas. Both parties agree that venue for any litigation arising from this contract shall lie in Nueces County, Corpus Christi, Texas.

**29. Waiver**

No claims or rights arising out of a breach of this contract can be discharged in whole or part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

**30. Interpretation – Parol Evidence**

This contract is intended by the parties as a final expression of their agreement and a complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties and no usage of the trade shall be relevant to supplement or explain any terms used in this contract. Acceptance or acquiescence in a course of performance rendered under this contract shall not be relevant to determine the meaning of this contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Texas Business & Commerce Code is used in this contract, the definition contained in the Code shall be controlling.

**31. Right to Assurance**

Whenever one Party to this contract in good faith has reason to question the other Party's intent to perform he may demand that the other Party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding Party may treat this failure as an anticipatory repudiation of the contract.

**32. Extension /Non-Appropriations Clause**

This contract may be renewed for (1) one additional year if the Bidder and the Program mutually agree and no increases in costs are incurred. Non-appropriations for renewal of contract will also be in accordance with the Local Government Code 271.005 (b) concerning non-appropriation clauses for multi-year contracts. Each participating local government member reserves the right to rescind the contract at the end of the fiscal year if it is determined that funding is not available to extend the contract.

**33. Proposal Acceptance**

The period for acceptance of this proposal will be sixty (60) calendar days unless a different period is indicated by the Bidder.



**34. Financing of the Program**

The cost of the Program is funded through a ten-percent (10%) vendor participation fee paid to the Program by participating vendors. This fee is based on actual invoiced sales to Members from vendors.

**35. Invoicing Participation Fees**

The Program will invoice the Bidder on a monthly basis for the two-percent (2%) participation fee. The invoice will be based on total sales made through the Program. The Bidder will remit payment to the Program on a net thirty (30) day term.

**36. Promotion of Contract:**

It is agreed that the Bidder will encourage all eligible Members to purchase from Program's awarded contracts and vendors.

**37. Questions Regarding Bid**

Questions or requests for additional information concerning this bid or the specifications SHALL be in writing and addressed to:

Goodbuy Purchasing Cooperative  
c/o Education Service Center, Region 2  
209 N. Water Street, Room 2-022  
Corpus Christi, TX 78401-2528

Telephone: 800-891-6403 or 361-561-8452  
Email: [Melanie.canedo@esc2.us](mailto:Melanie.canedo@esc2.us) or [purchasing@esc2.us](mailto:purchasing@esc2.us)