



NCPA Region 14 Education Service Center: RFP #20-20

Electric Vehicle Charging Infrastructure

Gilbarco Veeder-Root Response

July 23, 2020

***Deviations to all terms and conditions are listed as an enclosure to the response.**

Tab 1 – Master Agreement

General Terms and Conditions

- ◆ Customer Support
 - The vendor shall provide timely and accurate technical advice and sales support. The vendor shall use commercially reasonable efforts to respond to such requests within one (1) working day after receipt of the request.

- ◆ Disclosures
 - Respondent 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.
 - The respondent 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.

- ◆ Renewal of Contract
 - Unless otherwise stated, all contracts are for a period of three (3) years with an option to renew for up to two (2) additional one-year terms or any combination of time equally not more than 2 years if agreed to by Region 14 ESC and the vendor.

- ◆ 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.

- ◆ Shipments (if applicable)
 - The awarded vendor shall ship ordered products within specified product lead times after the receipt of the order, including any custom graphic designs, unless modified. If a product cannot be shipped within that time, the awarded vendor shall notify the entity placing the order as to why the product has not shipped and shall provide an estimated shipping date.

- ◆ Tax Exempt Status
 - Since this is a national contract, knowing the tax laws in each state is the sole responsibility of the vendor.

- ◆ Payments
 - The entity using the contract will make payments directly to the awarded vendor or their affiliates (distributors/business partners/resellers) as long as written request and

approval by NCPA is provided to the awarded vendor.

◆ Adding authorized distributors/dealers

- Awarded vendors may submit a list of distributors/partners/resellers to sell under their contract throughout the life of the contract. Vendor must receive written approval from NCPA before such distributors/partners/resellers considered authorized.
- Purchase orders and payment can only be made to awarded vendor or distributors/business partners/resellers previously approved by NCPA.
- Pricing provided to members by added distributors or dealers must also be less than or equal to the pricing offered by the awarded contract holder.
- All distributors/partners/resellers are required to abide by the Terms and Conditions of the vendor's agreement with NCPA.

◆ Pricing

- All pricing submitted shall include the administrative fee to be remitted to NCPA by the awarded vendor. It is the awarded vendor's responsibility to keep all pricing up to date and on file with NCPA.
- (a) Sales within U.S. Delivery terms and pricing for product sales within the United States are CPT (Incoterms 2020) Gilbarco's dock, Greensboro, NC, unless otherwise agreed to in writing by Gilbarco. Gilbarco shall arrange for appropriate means of transportation of the products ordered. Freight is pre-paid from Gilbarco's dock (Point of Delivery) and incurred after the products are delivered to the carrier from Point of Delivery to the Place of Destination. Risk of loss of or damage to the products or any part of the products shall pass to the Buyer upon delivery to carrier at the Point of Delivery, and Buyer shall have the responsibility of filing any damage claims with the carrier. Buyer shall arrange for applicable insurance covering the products from Point of Delivery to their Place of Destination. Legal title to the products shall pass to Buyer at the Point of Delivery.

◆ Warranty

- Proposals should address each of the following:
 - See attached warranty statements.
 - THESE WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ACCURACY WITH RESPECT TO THE SERVICES AND/OR SOFTWARE, OR ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. PROVIDER DOES NOT WARRANT THAT THE SERVICES WILL MEET BUYER'S REQUIREMENTS OR WILL BE UNINTERRUPTED OR ERROR-FREE. EXCEPT AS EXPRESSLY SET FORTH HEREIN, BUYER'S USE OF THE SERVICES, SOFTWARE, OR ANY DATA MADE AVAILABLE THROUGH THE SERVICES ARE SOLELY AT BUYER'S OWN RISK.
 - Applicable warranty and/or guarantees of equipment and installations including any conditions and response time for repair and/or replacement of any components during the warranty period.

- Availability of replacement parts
- Life expectancy of equipment under normal use
- Detailed information as to proposed return policy on all equipment

◆ Indemnity

- The awarded vendor shall protect, indemnify, and hold harmless Region 14 ESC and its participants, administrators, employees and agents against all claims, damages, losses and expenses arising out of or resulting from the actions of the vendor, vendor employees or vendor subcontractors in the preparation of the solicitation and the later execution of the contract where the execution is a breach of the contract.

◆ Limitation of Buyer's Remedies.

GILBARCO WILL NOT BE LIABLE FOR CLAIMS OR DAMAGES CAUSED BY BUYER'S FAILURE TO FULFILL ITS OBLIGATIONS HEREIN. TO THE FULL EXTENT PERMITTED UNDER APPLICABLE LAW, GILBARCO SHALL NOT BE LIABLE TO BUYER OR ANY THIRD PARTY WITH RESPECT TO ANY PRODUCT OR SERVICE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY FOR:

- (A) ANY CLAIMS, ACTIONS OR CAUSES OF ACTION ARISING OUT OF, UNDER OR IN CONNECTION WITH ANY ARRANGEMENT BETWEEN BUYER AND ANY THIRD PARTY, OR ANY FAILURE OF PERFORMANCE, BY A THIRD PARTY;
- (B) FAILURE OR DELAY OF RESPONSE TO A GILBARCO NOTIFICATION TO BUYER OF A CONDITION, FAILURE OR DELAY OF A DELIVERY;
- (C) FUEL SPILLS OR LEAKS, OBTAINING OR MAINTAINING COMPLIANCE PERMITS OR OTHER GOVERNMENTAL REGULATIONS, OR FOR TAXES, FINES OR OTHER GOVERNMENTAL LEVIES AGAINST BUYER;
- (D) INTERRUPTION OF USE; LOSS, INACCURACY, OR CORRUPTION OF SOFTWARE OR DATA; OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY;
- (E) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, EVEN IF GILBARCO IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES OR IF THE REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

THE ABOVE LIMITATION DOES NOT APPLY TO ANY INDEMNIFICATION FOR INFRINGEMENT, WHICH IS EXPRESSLY LIMITED TO THE REMEDIES LISTED THEREIN. IN ANY EVENT, GILBARCO SHALL BE LIABLE ONLY FOR ACTUAL DAMAGES AND GILBARCO'S MAXIMUM LIABILITY HEREUNDER, REGARDLESS OF THE LEGAL THEORY, SHALL NOT EXCEED (i) THE CONTRACT PRICE OF THE PRODUCTS GILBARCO FURNISHED; OR (ii) THE AGGREGATE OF FEES PAID TO GILBARCO FOR SERVICES DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE MOST CURRENT EVENT GIVING RISE TO SUCH LIABILITY OCCURRED.

◆ Franchise Tax

- Gilbarco Inc.'s franchise taxes are paid by its parent company, Fortive Inc. Therefore, a statement regarding franchise taxes is not applicable here.

◆ Supplemental Agreements

- The entity participating in this contract and awarded vendor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement developed as a result of this contract is exclusively between the participating entity and awarded vendor.

◆ Certificates of Insurance

- Certificates of insurance shall be delivered to the Public Agency prior to commencement of work. The insurance company shall be licensed in the applicable state in which work is

being conducted. The awarded vendor shall give the participating entity a minimum of thirty (30) days' notice prior to cancellation of policies.

◆ Legal Obligations

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

◆ Protest

- A protest of an award or proposed award must be filed in writing within ten (10) days from the date of the official award notification and must be received by 5:00 pm CST. Protests shall be filed with Region 14 ESC and shall include the following:
 - Name, address and telephone number of protester
 - Original signature of protester or its representative
 - Identification of the solicitation by RFP number
 - Detailed statement of legal and factual grounds including copies of relevant documents and the form of relief requested
- Any protest review and action shall be considered final with no further formalities being considered.

◆ Force Majeure

- If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.
- The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the

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

◆ Prevailing Wage

- It shall be the responsibility of the Vendor to comply, when applicable, with the prevailing wage legislation in effect in the jurisdiction of the purchaser. It shall further be the responsibility of the Vendor to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of this contract and adjust wage rates accordingly.

◆ Proprietary Rights.

- (a) Gilbarco shall retain all rights to designs, drawings, patterns, plans, specifications, technology, technical data and information, technical processes and business methods, whether patentable or not, arising out of or resulting from Gilbarco rendering engineering services to and designing systems/ products for Buyer's use. Buyer agrees not to enforce against Gilbarco or customers of Gilbarco any patent rights, the scope of which includes a system, process or business method utilizing products or engineering services delivered hereunder by Gilbarco and which relates to an invention, improvement, enhancement or development made by or for Buyer.
- (b) Gilbarco and its licensors are the author and owner of all services and other creative materials or software for the services (including SaaS Services). Gilbarco hereby grants to Buyer a personal, non-exclusive, non-transferable, non-sublicensable right to use the software that is provided as part of the services ("Software"), including any updates thereto, solely for use of the services. Buyer may request that Gilbarco provide Buyer's designated ASC with access to services to assist Buyer with the monitoring, maintenance, or repairs of the sites. Such access will (i) be subject to the limitations provided herein; (ii) require the ASC to sign an access agreement with Gilbarco; and (iii) require that Buyer be jointly liable for any such access granted to the ASC. Buyer shall not reverse engineer, decompile, or disassemble the Software or the services. Gilbarco and its licensors shall retain all other rights, title and interest in and to the services and the Software, including but not limited to (i) all derivative works and all related documentation; and (ii) all Gilbarco service marks, trademarks, trade names or other designations; and (iii) all other intellectual and industrial property rights of any sort in the services and the Software. Upon termination of the services, the foregoing licenses shall terminate immediately.
- (c) Gilbarco shall defend and hold harmless Buyer from and against amounts payable under any judgment, verdict, court order or settlement for third party claims against

Buyer that the Services infringes the intellectual property of the third party, provided: (i) Gilbarco shall have the right to control all negotiation, defense, and settlement of such a claim so long as the settlement does not require payment, admission, or action by Buyer; and, (ii) Buyer provides Gilbarco with prompt notice of such claim that Gilbarco's right to defend the matter is not diminished in any way. If Gilbarco receives a claim for intellectual property infringement or misappropriation related to services, at its own discretion, Gilbarco may (i) obtain a license at no additional cost to Buyer for continued use of the services; (ii) subject to the warranty, modify the Services so that they no longer infringe or misappropriate the intellectual property; or (iii) terminate the services upon 30 days' written notice to Buyer with a refund to Buyer of any prepaid fees prorated for the remainder of the term;

◆ Miscellaneous

- Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 business days after the other party receives the notice of cancellation; provided, however, that the purchaser shall complete all accepted orders. After the 30th business day all work will cease following completion of final purchase order.

◆ Open Records Policy

- Because Region 14 ESC is a governmental entity responses submitted are subject to release as public information after contracts are executed. If a vendor believes that its response, or parts of its response, may be exempted from disclosure, the vendor must specify page-by-page and line-by-line the parts of the response, which it believes, are exempt. In addition, the respondent must specify which exception(s) are applicable and provide detailed reasons to substantiate the exception(s).
- The determination of whether information is confidential and not subject to disclosure is the duty of the Office of Attorney General (OAG). Region 14 ESC must provide the OAG sufficient information to render an opinion and therefore, vague and general claims to confidentiality by the respondent are not acceptable. Region 14 ESC must comply with the opinions of the OAG. Region14 ESC assumes no responsibility for asserting legal arguments on behalf of any vendor. Respondent are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

Process

Region 14 ESC will evaluate proposals in accordance with, and subject to, the relevant statutes, ordinances, rules, and regulations that govern its procurement practices. NCPA will assist Region 14 ESC in evaluating proposals. Award(s) will be made to the prospective vendor whose response is determined to be the most advantageous to Region 14 ESC, NCPA, and its participating agencies. To qualify for evaluation, response must have been submitted on time, and satisfy all mandatory requirements identified in this document.

◆ Contract Administration

- The contract will be administered by Region 14 ESC. The National Program will be administered by NCPA on behalf of Region 14 ESC.

◆ Contract Term

- The contract term will be for three (3) year starting from the date of the award. The contract may be renewed for up to two (2) additional one-year terms or any combination of time equally not more than 2 years.
- It should be noted that maintenance/service agreements may be issued for up to (5) years under this contract even if the contract only lasts for the initial term of the contract. NCPA will monitor any maintenance agreements for the term of the agreement provided they are signed prior to the termination or expiration of this contract.

◆ Contract Waiver

- Any waiver of any provision of this contract shall be in writing and shall be signed by the duly authorized agent of Region 14 ESC. The waiver by either party of any term or condition of this contract shall not be deemed to constitute waiver thereof nor a waiver of any further or additional right that such party may hold under this contract.

◆ Products and Services additions

- Products and Services may be added to the resulting contract during the term of the contract by written amendment, to the extent that those products and services are within the scope of this RFP.

◆ Competitive Range

- It may be necessary for Region 14 ESC to establish a competitive range. Responses not in the competitive range are unacceptable and do not receive further award consideration.

◆ Deviations and Exceptions

- Deviations or exceptions stipulated in response may result in disqualification. It is the intent of Region 14 ESC to award a vendor's complete line of products and/or services, when possible.

◆ Estimated Quantities

- The estimated dollar volume of Products and Services purchased under the proposed Master Agreement is \$30 million dollars annually. This estimate is based on the anticipated volume of Region 14 ESC and current sales within the NCPA program. There is no guarantee or commitment of any kind regarding usage of any contracts resulting from this solicitation

◆ Evaluation

- Region 14 ESC will review and evaluate all responses in accordance with, and subject to, the relevant statutes, ordinances, rules and regulations that govern its procurement practices. NCPA will assist the lead agency in evaluating proposals. Recommendations for contract awards will be based on multiple factors, each factor being assigned a point value based on its importance.

◆ Formation of Contract

- A response to this solicitation is an offer to contract with Region 14 ESC based upon the terms, conditions, scope of work, and specifications contained in this request. A solicitation does not become a contract until it is accepted by Region 14 ESC. The prospective vendor must submit a signed Signature Form with the response thus, eliminating the need for a formal signing process.

◆ NCPA Administrative Agreement

- The vendor will be required to enter and execute the National Cooperative Purchasing Alliance Administration Agreement with NCPA upon award with Region 14 ESC. The agreement establishes the requirements of the vendor with respect to a nationwide contract effort.

◆ Clarifications / Discussions

- Region 14 ESC may request additional information or clarification from any of the respondents after review of the proposals received for the sole purpose of elimination minor irregularities, informalities, or apparent clerical mistakes in the proposal. Clarification does not give respondent an opportunity to revise or modify its proposal, except to the extent that correction of apparent clerical mistakes results in a revision. After the initial receipt of proposals, Region 14 ESC reserves the right to conduct discussions with those respondent's whose proposals are determined to be reasonably susceptible of being selected for award. Discussions occur when oral or written communications between Region 14 ESC and respondent's are conducted for the purpose clarifications involving information essential for determining the acceptability of a proposal or that provides respondent an opportunity to revise or modify its proposal. Region 14 ESC will not assist respondent bring its proposal up to the level of other proposals through discussions. Region 14 ESC will not indicate to respondent a cost or price that it must meet to neither obtain further consideration nor will it provide any information about other respondents' proposals or prices.

◆ Multiple Awards

- Multiple Contracts may be awarded as a result of the solicitation. Multiple Awards will ensure that any ensuing contracts fulfill current and future requirements of the diverse and large number of participating public agencies.

◆ Past Performance

- Past performance is relevant information regarding a vendor's actions under previously awarded contracts; including the administrative aspects of performance; the vendor's history of reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the vendor's businesslike concern for the interests of the customer.

Evaluation Criteria

- ◆ Pricing (40 points)
 - Electronic Price Lists
 - Products, Services, Warranties, etc. price list
 - Prices listed will be used to establish both the extent of a vendor's product lines, services, warranties, etc. available from a particular bidder and the pricing per item.

- ◆ Ability to Provide and Perform the Required Services for the Contract (25 points)
 - Product Delivery within participating entities specified parameters
 - Number of line items delivered complete within the normal delivery time as a percentage of line items ordered.
 - Vendor's ability to perform towards above requirements and desired specifications.
 - Past Cooperative Program Performance
 - Quantity of line items available that are commonly purchased by the entity.
 - Quality of line items available compared to normal participating entity standards.

- ◆ References (15 points)
 - A minimum of ten (10) customer references for product and/or services of similar scope dating within past 3 years

- ◆ Technology for Supporting the Program (10 points)
 - Electronic on-line catalog, order entry use by and suitability for the entity's needs
 - Quality of vendor's on-line resources for NCPA members.
 - Specifications and features offered by respondent's products and/or services

- ◆ Value Added Services Description, Products and/or Services (10 points)
 - Marketing and Training
 - Minority and Women Business Enterprise (MWBE) and (HUB) Participation
 - Customer Service

Signature Form

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

Prices are guaranteed: **120 days**

Company name Gilbarco Inc.
Address 7300 W. Friendly Ave.
City/State/Zip Greensboro/North Carolina/27410
Telephone No. 336.547.5000
Fax No. 336.547.5079
Email address Andrew.robinson@gilbarco.com
Printed name Andrew Robinson
Position with company VP and GM Forecourt Systems
Authorized signature *Andrew Robinson*
DocuSigned by:
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Tab 2 – NCPA Administration Agreement

This Administration Agreement is made as of August 24, 2020, by and between National Cooperative Purchasing Alliance (“NCPA”) and Gilbarco Inc. (“Vendor”).

Recitals

WHEREAS, Region 14 ESC has entered into a certain Master Agreement dated August 24, 2020, referenced as Contract Number 05-45, by and between Region 14 ESC and Vendor, as may be amended from time to time in accordance with the terms thereof (the “Master Agreement”), for the purchase of Electric Vehicle Charging Infrastructure;

WHEREAS, said Master Agreement provides that any state, city, special district, local government, school district, private K-12 school, technical or vocational school, higher education institution, other government agency or nonprofit organization (hereinafter referred to as “public agency” or collectively, “public agencies”) may purchase products and services at the prices indicated in the Master Agreement;

WHEREAS, NCPA has the administrative and legal capacity to administer purchases under the Master Agreement to public agencies;

WHEREAS, NCPA serves as the administrative agent for Region 14 ESC in connection with other master agreements offered by NCPA

WHEREAS, Region 14 ESC desires NCPA to proceed with administration of the Master Agreement; WHEREAS, NCPA and Vendor desire to enter into this Agreement to make available the Master Agreement to public agencies on a national basis;

NOW, THEREFORE, in consideration of the payments to be made hereunder and the mutual covenants contained in this Agreement, NCPA and Vendor hereby agree as follows:

◆ General Terms and Conditions

- The Master Agreement, attached hereto as Tab 1 and incorporated herein by reference as though fully set forth herein, and the terms and conditions contained therein shall apply to this Agreement except as expressly changed or modified by this Agreement.
- NCPA shall be afforded all of the rights, privileges and indemnifications afforded to Region 14 ESC under the Master Agreement, and such rights, privileges and indemnifications shall accrue and apply with equal effect to NCPA under this Agreement including, but not limited to, the Vendor’s obligation to provide appropriate insurance and certain indemnifications to Region 14 ESC.
- Vendor shall perform all duties, responsibilities and obligations required under the Master Agreement in the time and manner specified by the Master Agreement.
- NCPA shall perform all of its duties, responsibilities, and obligations as administrator of purchases under the Master Agreement as set forth herein, and Vendor acknowledges that NCPA shall act in the capacity of administrator of purchases under the Master Agreement.
- With respect to any purchases made by Region 14 ESC or any Public Agency pursuant to the Master Agreement, NCPA (a) shall not be construed as a dealer, re-marketer,

representative, partner, or agent of any type of Vendor, Region 14 ESC, or such Public Agency, (b) shall not be obligated, liable or responsible (i) for any orders made by Region

14 ESC, any Public Agency or any employee of Region 14 ESC or Public Agency under the Master Agreement, or (ii) for any payments required to be made with respect to such order, and (c) shall not be obligated, liable or responsible for any failure by the Public Agency to (i) comply with procedures or requirements of applicable law, or (ii) obtain the due authorization and approval necessary to purchase under the Master Agreement. NCPA makes no representations or guaranties with respect to any minimum purchases required to be made by Region 14 ESC, any Public Agency, or any employee of Region 14 ESC or Public Agency under this Agreement or the Master Agreement.

- The Public Agency participating in the NCPA contract and Vendor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement developed as a result of this contract is exclusively between the Public Agency and Vendor. NCPA, its agents, members and employees shall not be made party to any claim for breach of such agreement.

◆ **Term of Agreement**

- This Agreement shall be in effect so long as the Master Agreement remains in effect, provided, however, that the obligation to pay all amounts owed by Vendor to NCPA through the termination of this Agreement and all indemnifications afforded by Vendor to NCPA shall survive the term of this Agreement.

◆ **Fees and Reporting**

- The awarded vendor shall electronically provide NCPA with a detailed monthly or quarterly report showing the dollar volume of all paid sales under the contract for the previous month or quarter. Reports shall be sent via e-mail to NCPA offices at reporting@ncpa.us. Reports are due on the fifteenth (15th) day after the close of the previous month or quarter. It is the responsibility of the awarded vendor to collect and compile all sales under the contract from participating members and submit one (1) report. The report shall include at least the following information as listed in the example below:

Entity Name	Zip Code	State	PO or Job #	Sale Amount

Total _____

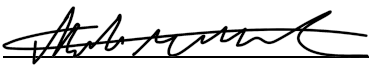
- Each quarter NCPA will invoice the vendor based on the total of sale amount(s) reported. From the invoice the vendor shall pay to NCPA an administrative fee based upon the tiered fee schedule below. Vendor’s annual sales shall be measured on a calendar year basis. Deadline for term of payment will be included in the invoice NCPA provides.


<u>Annual Sales Through Contract</u>	<u>Administrative Fee</u>
0 - \$30,000,000	2%
\$30,000,001 - \$50,000,000	1.5%
\$50,000,001+	1%

- Supplier shall maintain an accounting of all purchases made by Public Agencies under the Master Agreement. NCPA and Region 14 ESC reserve the right to audit the accounting for a period of four (4) years from the date NCPA receives the accounting. In the event of such an audit, the requested materials shall be provided at the location designated by Region 14 ESC or NCPA. In the event such audit reveals an underreporting of Contract Sales and a resulting underpayment of administrative fees, Vendor shall promptly pay NCPA the amount of such underpayment, together with interest on such amount and shall be obligated to reimburse NCPA's costs and expenses for such audit.

◆ General Provisions

- This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.
- Awarded vendor agrees to allow NCPA to use their name and logo within website, marketing materials and advertisement. Any use of NCPA name and logo or any form of publicity regarding this contract by awarded vendor must have prior approval from NCPA.
- If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement or to recover any administrative fee and accrued interest, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other relief to which such party may be entitled.
- Neither this Agreement nor any rights or obligations hereunder shall be assignable by Vendor without prior written consent of NCPA, provided, however, that the Vendor may, without such written consent, assign this Agreement and its rights and delegate its obligations hereunder in connection with the transfer or sale of all or substantially all of its assets or business related to this Agreement, or in the event of its merger, consolidation, change in control or similar transaction. Any permitted assignee shall assume all assigned obligations of its assignor under this Agreement.
- This Agreement and NCPA's rights and obligations hereunder may be assigned at NCPA's sole discretion, to an existing or newly established legal entity that has the authority and capacity to perform NCPA's obligations hereunder
- All written communications given hereunder shall be delivered to the addresses as set forth below.

National Cooperative Purchasing Alliance:
 Name: Matthew Mackel
 Title: Director, Business Development
 Address: PO Box 701273
Houston, TX 77270
 Signature: 
 Date: August 24, 2020

Vendor: Gilbarco Inc.
 Name: Andrew Robinson
 Title: VP and GM Forecourt Systems
 Address: 7300 W. Friendly Avenue
Greensboro, NC 27410
 Signature: 
 Date: 7/23/2020



DocuSigned by:
Andrew Robinson
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Tab 3 – Vendor Questionnaire

Please provide responses to the following questions that address your company's operations, organization, structure, and processes for providing products and services.

◆ States Covered

- Bidder must indicate any and all states where products and services can be offered.
- Please indicate the price co-efficient for each state if it varies.

■ **50 States & District of Columbia** (Selecting this box is equal to checking all boxes below)

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

All US Territories and Outlying Areas (Selecting this box is equal to checking all boxes below)

- American Somoa
- Federated States of Micronesia
- Guam
- Midway Islands
- Northern Marina Islands
- Puerto Rico
- U.S. Virgin Islands

◆ **Minority and Women Business Enterprise (MWBE) and (HUB) Participation**

- It is the policy of some entities participating in NCPA to involve minority and women business enterprises (MWBE) and historically underutilized businesses (HUB) in the purchase of goods and services. Respondents shall indicate below whether or not they are an M/WBE or HUB certified.
 - Minority / Women Business Enterprise
 - Respondent Certifies that this firm is a M/WBE
 - Historically Underutilized Business
 - Respondent Certifies that this firm is a HUB

◆ **Residency**

- Responding Company's principal place of business is in the city of Greensboro, State of North Carolina.

◆ **Felony Conviction Notice**

- Please Check Applicable Box;
 - A publicly held corporation; therefore, this reporting requirement is not applicable. Is
 - not owned or operated by anyone who has been convicted of a felony.
 - Is owned or operated by the following individual(s) who has/have been convicted of a felony
- If the 3rd box is checked, a detailed explanation of the names and convictions must be attached.

◆ **Distribution Channel**

- Which best describes your company's position in the distribution channel:
 - Manufacturer Direct
 - Authorized Distributor
 - Value-added reseller
 - Certified education/government reseller
 - Manufacturer marketing through reseller
 - Other: _____

◆ **Processing Information**

- Provide company contact information for the following:
 - Sales Reports / Accounts Payable
 - Contact Person: Kathy Williams & Morris Pennington
 - Title: Finance Manager
 - Company: Gilbarco Veeder-Root
 - Address: 7300 W. Friendly Avenue
 - City: Greensboro State: North Carolina Zip: 27410
 - Phone: 336.547.5515 Email: Kathy.williams@gilbarco.com, Morris.pennington@gilbarco.com

- Purchase Orders

Contact Person: Joshua Fields

Title: Customer Service Supervisor

Company: Gilbarco Veeder-Root

Address: 7300 W. Friendly Avenue

City: Greensboro State: North Carolina Zip: 27410

Phone: 336.315.2997 Email: Joshua.fields@gilbarco.com

- Sales and Marketing

Contact Person: Nate Valaik

Title: Product Marketing Manager

Company: Gilbarco Veeder-Root

Address: 7300 W. Friendly Avenue

City: Greensboro State: North Carolina Zip: 27410

Phone: 336.209.5796 Email: Nathaniel.valaik@gilbarco.com

◆ Pricing Information

- In addition to the current typical unit pricing furnished herein, the Vendor agrees to offer all future product introductions at prices that are proportionate to Contract Pricing.
 - If answer is no, attach a statement detailing how pricing for NCPA participants would be calculated for future product introductions.

Yes No
- Pricing submitted includes the required NCPA administrative fee. The NCPA fee is calculated based on the invoice price to the customer.

Yes No
- Vendor will provide additional discounts for purchase of a guaranteed quantity.

Yes No

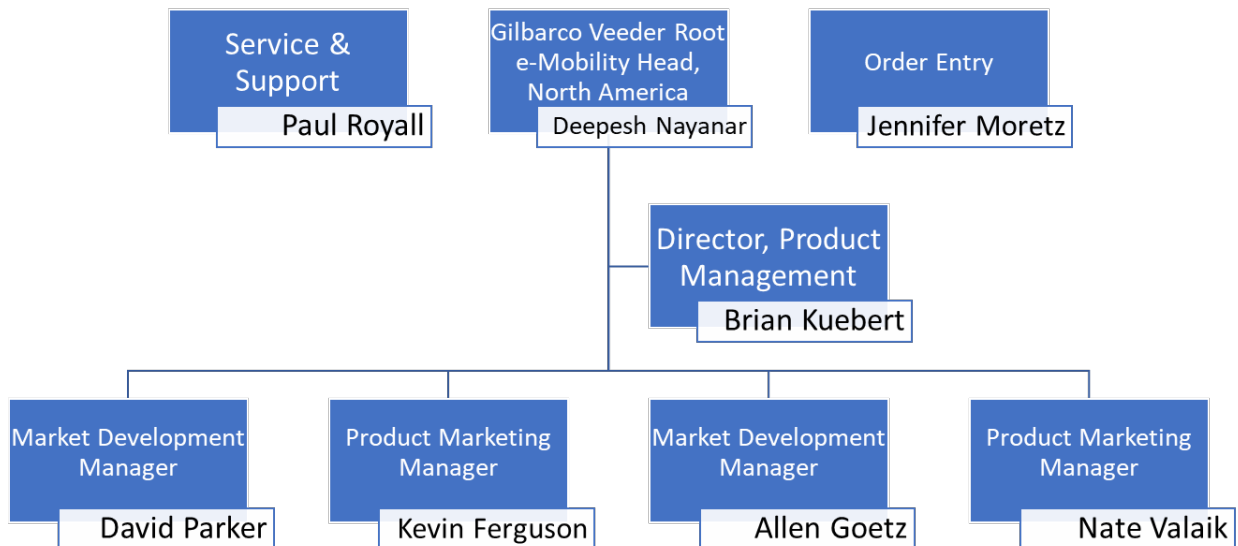
Tab 4 – Vendor Profile

Please provide the following information about your company:

- ◆ Company’s official registered name: **Gilbarco Inc.**
- ◆ Brief history of your company, including the year it was established:

Gilbarco Veeder-Root is the worldwide technology leader for retail, commercial, and fleet fueling operations offering a broad range of integrated solutions. The company traces its founding to 1865, when Charles Gilbert and John Barker created the Springfield Gas Machine to light buildings with gas lamps, eventually devising a solution to safely light rural homes. Since then, Gilbarco-Veeder Root has evolved into the worldwide leader for retail, commercial, and fleet fueling operations. Gilbarco Veeder-Root has earned the trust of its customers by providing long-term partnerships, uncompromising support, and proven reliability. Expanding on our more than 150-year history of transportation expertise, we offer EV charging and e-Mobility solutions to support the future of transportation and mobility.

- ◆ Company’s Dun & Bradstreet (D&B) number: **1115245**
- ◆ Company’s organizational chart of those individuals that would be involved in the contract.



- ◆ Corporate office location:

7300 W. Friendly Avenue, Greensboro, NC 27410

- List the number of sales and services offices for states being bid in solicitation:

One, Gilbarco Veeder-Root Headquarters, as listed above. Services are provided through service contractors with offices located nationally. (Contractors and the locations of their offices can change).

- List the names of key contacts at each with title, address, phone and e-mail address:

Paul Royall, Manager, North American Service Delivery

- **Address: 7300 W. Friendly Avenue, Greensboro, NC 27410**
- **Phone: 336.315.2628**
- **E-mail: paul.royall@gilbarco.com**

- ◆ Define your standard terms of payment:

See <https://www.gilbarco.com/us/legal/terms-and-conditions-sale-products-and-services> for complete standard terms and conditions. Per Gilbarco Veeder-Root's terms and conditions, "payment shall be due within thirty (30) days from date of invoice (Net 30 days)."

- ◆ Who is your competition in the marketplace?

Some examples of competitors could include: ChargePoint, ABB, and Tesla.

- ◆ What differentiates your company from competitors?

Several factors differentiate Gilbarco Veeder-Root from our competition. These include exceptional product quality, outstanding service & support, and a long history of corporate reliability. Our products are rugged and well-manufactured. Our line of Tritium Direct Current Fast Chargers (DCFCs) employ liquid-cooling technology to improve reliability and decrease maintenance time/cost compared to similar DCFC offerings. Similarly, the Amps2Go line of Level 2 (L2) chargers boasts aluminum construction for operation in harsh environments. Both our DCFC and L2 chargers are aesthetically pleasing, with small footprints for optimal depot layout.

Gilbarco Veeder-Root offers a US-based support center that operates 24 hours a day, 7 days a week to support customers' fueling needs with basic support services, remote repairs, and dispatching services as needed. Unlike our competitors, our history of exceptional service & support helps customers rest easy knowing Gilbarco Veeder-Root is well-prepared to support should difficulties arise.

Finally, with more than 150 years of history, Gilbarco Inc. has shown unmatched dedication to the transportation industry. Unlike newer competitors who may not stand the test of time, Gilbarco Veeder-Root will support the transition to electrified transportation bolstered by our traditional fuels business ensuring equipment availability and support for a long time to come. Additionally, customers will be supported by the same reliable service team that addresses existing fueling product service providing an unparalleled level of comfort and assurance that equipment can be serviced in a timely, professional manner.

- ◆ Describe how your company will market this contract if awarded.

Through Gilbarco Veeder-Root's traditional fueling business, we have a broad and well-established reputation as a trusted brand and reliable partner for fueling needs. Extending existing marketing activity to include e-Mobility products for NCPA, Gilbarco Veeder-Root's e-Mobility team will deploy a host of approaches to leverage our reputation as a trusted brand and reliable total fueling partner with best in class solutions and service to the NCPA community. From newsletters, e-mail campaigns, and webinars to trade shows and customer calls through direct sales force and distribution partners, NCPA members will be educated about Gilbarco Veeder-Root's ability to solve their electrification needs. Beyond product promotion, the team will support NCPA members in not only offering competitive pricing through this RFP, but also in identifying available funding dollars to further help offset their costs. Through digital and in-person contact, we will help members achieve success with their electrification projects.

- ◆ Describe how you intend to introduce NCPA to your company.

Gilbarco Veeder-Root would be happy to conduct a webinar with a corporate/product overview for NCPA.

- ◆ Describe your firm's capabilities and functionality of your on-line catalog / ordering website.

Gilbarco Veeder-Root's e-Mobility products are currently ordered by submitting a Purchase Order to Gilbarco Inc.'s customer service team.

- ◆ Describe your company's Customer Service Department (hours of operation, number of service centers, etc.):

We operate a 24/7/365 Support Center in Greensboro, NC. We have over 600 service partners in North America with over 2,400 certified technicians that provide emergency service 24/7/365. We have a team of 20 field-based support engineers that provide additional support as required.

- ◆ Green Initiatives

- As our business grows, we want to make sure we minimize our impact on the Earth's climate. We are taking every step we can to implement innovative and responsible environmental practices throughout NCPA to reduce our carbon footprint, reduce waste,

energy conservation, ensure efficient computing and much more. To that effort we ask respondents to provide their companies environmental policy and/or green initiative:

Gilbarco Veeder-Root is committed to maintaining a safe, healthy, and sustainable workplace for all employees and is committed to achieving a zero accident and incident workplace. Accordingly, Gilbarco Veeder-Root considers local health and safety laws, as well as other environment and legal requirements, as the bare minimum standard for its internal policy. Highlights of this policy include timely maintenance of work areas, diligent adherence to internal risk assessments and the implementation of necessary countermeasures, on-going training and instruction to all employees, the provision of all necessary protective safety equipment, and periodic third-party audits. Gilbarco Veeder-Root is also deeply committed to sustainability initiatives through the company's Environmental Policy. The primary focus of this program is to reduce pollution, achieve (and exceed) compliance obligations, safely and effectively manage identified impacts when they occur, and improve against relevant sustainability metrics over time. Since enactment, Gilbarco Veeder-Root has steadily reduced its normalized energy consumption, water consumption, and waste generation while increasing recycled materials. Please see attached for more information.

◆ Vendor Certifications (if applicable)

- Provide a copy of all current licenses, registrations and certifications issued by federal, state and local agencies, and any other licenses, registrations or certifications from any other governmental entity with jurisdiction, allowing respondent to perform the covered services including, but not limited to, licenses, registrations, or certifications. Certifications can include M/WBE, HUB, and manufacturer certifications for sales and service: **Our service partners hold all licenses that are required by Federal, State, and local agencies to provide preventive maintenance and service for e-Mobility chargers.**

Tab 5 – Products and Services

- ◆ Respondent shall perform and provide these products and/or services under the terms of this agreement. The supplier shall assist the end user with making a determination of their individual needs. **Please see below for specific information related to products/services.**
- ◆ The following is a list of suggested (but not limited to) categories. List all categories along with manufacturer that you are responding with:
 - Electric vehicle charging infrastructure (EVSE)
 - **Veefil-RT** – The Veefil-RT is Gilbarco Veeder-Root’s Direct Current Fast Charging (DCFC) product. For additional information, please see the attached product specifications.
 - *Manufacturer:* Tritium
 - *Conditions/Response Time for Repair/Component Replacement During Warranty Period:* See attached warranty policy.
 - *Availability of Replacement Parts:* Replacement parts are available as required via Gilbarco Veeder-Root or authorized distributor partners.
 - *Life Expectancy Under Normal Use:* 10 years.
 - *Return Policy:* Returns not accepted.
 - *Standard Lead Time:* 8-12 weeks.
 - **Amps2Go Series 6** – The Amps2Go Series 6 is Gilbarco Veeder-Root’s Level 2 charging product. For additional information, please see the attached product specifications.
 - *Manufacturer:* SemaConnect Inc.
 - *Conditions/Response Time for Repair/Component Replacement During Warranty Period:* See attached warranty policy.
 - *Availability of Replacement Parts:* Not applicable due to the warranty policy. See attached warranty policy for more information.
 - *Life Expectancy Under Normal Use:* 10 years.
 - *Return Policy:* Returns not accepted.
 - *Standard Lead Time:* 4 weeks.
 - **Amps2Go Series 7** – The Amps2Go Series 7 is another of Gilbarco Veeder-Root’s Level 2 charging products. For additional information, please see the attached product specifications. [Please note, the Amps2Go Series 7 product brochure still retains branding from the equipment manufacturer, SemaConnect. It will be re-branded with the Amps2Go brand at a later date. The new specification sheet can be forwarded to NCPA if this is of interest.]
 - *Manufacturer:* SemaConnect Inc.
 - *Conditions/Response Time for Repair/Component Replacement During Warranty Period:* See attached warranty policy.
 - *Availability of Replacement Parts:* Not applicable due to the warranty policy. See attached warranty policy for more information.
 - *Life Expectancy Under Normal Use:* 10 years.
 - *Return Policy:* Returns not accepted.
 - *Standard Lead Time:* 4 weeks.
 - Associated software as determined by use case and customer needs.
 - **Energy Knowledge Operating System (EKOS)** — EKOS provides fleet managers a single-pane view of EV charging and traditional fueling. For fleet managers, it is exceptionally important to monitor and manage the sourcing/use of all energy, as well as control all fuel dispensing devices, including EV chargers. EKOS provides this capability and allows for a smooth transition for fleet managers who operate fleets of mixed fuel-types, such as gas-powered vehicles alongside electric vehicles.
 - **SemaConnect Network Services** – The SemaConnect network applies to Gilbarco Veeder-

Root's Amps2Go products and provides equipment owners simple charger management. On the SemaConnect network, Amps2Go owners can control access to their chargers, as well as monitor their chargers' availability and energy consumed.

- Warranty for equipment: **Standard warranty terms for the Veefil-RT and Amps2Go chargers are listed in the attached warranty statements, respectively.**

Tab 8 – Value Added Products and Services

- ◆ Include any additional products and/or services available that vendor currently performs in their normal course of business that is not included in the scope of the solicitation that you think will enhance and add value to this contract for Region 14 ESC and all NCPA participating entities.

Tab 9 – Required Documents

- ◆ Clean Air and Water Act / Debarment Notice
- ◆ Contractors Requirements
- ◆ Antitrust Certification Statements
- ◆ Required Clauses for Federal Funds Certifications
- ◆ Required Clauses for Federal Assistance by FTA
- ◆ State Notice Addendum

Clean Air and Water Act & Debarment Notice

I, the Vendor, am in compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970, as Amended (42 U.S. C. 1857 (h), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15 as required under OMB Circular A-102, Attachment O, Paragraph 14 (1) regarding reporting violations to the grantor agency and to the United States Environment Protection Agency Assistant Administrator for the Enforcement.

I hereby further certify that my company has not been debarred, suspended or otherwise ineligible for participation in Federal Assistance programs under Executive Order 12549, "Debarment and Suspension", as described in the Federal Register and Rules and Regulations

Potential Vendor	<u>Gilbarco Inc.</u>
Print Name	<u>Andrew Robinson</u>
Address	<u>7300 W. Friendly Avenue</u>
City, State, Zip	<u>Greensboro, NC, 27410</u>
Authorized signature	<u><small>DocuSigned by:</small> Andrew Robinson</u>
Date	<u>7/23/2020</u>



Contractor Requirements

Contractor Certification Contractor's Employment Eligibility

By entering the contract, Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA), and all other federal and state immigration laws and regulations. The Contractor further warrants that it is in compliance with the various state statutes of the states it is will operate this contract in.

Participating Government Entities including School Districts may request verification of compliance from any Contractor or subcontractor performing work under this Contract. These Entities reserve the right to confirm compliance in accordance with applicable laws.

Should the Participating Entities suspect or find that the Contractor or any of its subcontractors are not in compliance, they may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

The offeror complies and maintains compliance with the appropriate statutes which requires compliance with federal immigration laws by State employers, State contractors and State subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.

Contractor shall comply with governing board policy of the NCPA Participating entities in which work is being performed

Fingerprint & Background Checks

If required to provide services on school district property at least five (5) times during a month, contractor shall submit a full set of fingerprints to the school district if requested of each person or employee who may provide such service. Alternately, the school district may fingerprint those persons or employees. An exception to this requirement may be made as authorized in Governing Board policy. The district shall conduct a fingerprint check in accordance with the appropriate state and federal laws of all contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the district. Contractor, subcontractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

The offeror shall comply with fingerprinting requirements in accordance with appropriate statutes in the state in which the work is being performed unless otherwise exempted.

Contractor shall comply with governing board policy in the school district or Participating Entity in which work is being performed

Business Operations in Sudan, Iran

In accordance with A.R.S. 35-391 and A.R.S. 35-393, the Contractor hereby certifies that the contractor does not have scrutinized business operations in Sudan and/or Iran.

Authorized signature

DocuSigned by:
Andrew Robinson
6EE7468A179643C...

Date

7/23/2020



Antitrust Certification Statements (Tex. Government Code § 2155.005)

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

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

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

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

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

Company name Gilbarco Inc.
Address 7300 W. Friendly Avenue
City/State/Zip Greensboro, NC 27410
Telephone No. 336.547.5000
Fax No. 336.547.5079
Email address Andrew.Robinson@gilbarco.com
Printed name Andrew Robinson

Position with company VP and General Manager Forecourt Systems

Authorized signature DocuSigned by:
Andrew Robinson
6EE7468A179643C...



Required Clauses for Federal Funds Certifications

Participating Agencies may elect to use federal funds to purchase under the Master Agreement. The following certifications and provisions may be required and apply when a Participating Agency expends federal funds for any purchase resulting from this procurement process. Pursuant to 2 C.F.R. § 200.326, all contracts, including small purchases, awarded by the Participating Agency and the Participating Agency's subcontractors shall contain the procurement provisions of Appendix II to Part 200, as applicable.

APPENDIX II TO 2 CFR PART 200

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

(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

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

Pursuant to Federal Rule (C) above, when a Participating Agency expends federal funds on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision

for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. The NCPA acknowledges and agrees this contract is not a “funding agreement.” Provider owns all intellectual property associated with its products and services.

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

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

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee

of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

RECORD RETENTION REQUIREMENTS FOR CONTRACTS INVOLVING FEDERAL FUNDS

When federal funds are expended by Participating Agency for any contract resulting from this procurement process, offeror certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The offeror further certifies that offeror will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT

When Participating Agency expends federal funds for any contract resulting from this procurement process, offeror certifies that it will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.; 49 C.F.R. Part 18).

CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS

The products offered in this RFP by Gilbarco Inc. do not comply with Buy America provisions.

Required Clauses for Federal Assistance provided by FTA

ACCESS TO RECORDS AND REPORTS

Contractor agrees to:

- a) Maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract or any extensions thereof except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until Public Agency, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.
- b) Permit any of the foregoing parties to inspect all work, materials, payrolls, and other data and records with regard to the Project, and to audit the books, records, and accounts with regard to the Project and to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed for the purpose of audit and examination.

FTA does not require the inclusion of these requirements of Article 1.01 in subcontracts. Reference 49 CFR 18.39 (i)(11).

CIVIL RIGHTS / TITLE VI REQUIREMENTS

- 1) Non-discrimination. In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12132, and Federal Transit Law at 49 U.S.C. § 5332, Contractor or subcontractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, marital status age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- 2) Equal Employment Opportunity. The following Equal Employment Opportunity requirements apply to this Contract:
 - a. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit Law at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable Equal Employment Opportunity requirements of U.S. Dept. of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, 41 CFR, Parts 60 et seq., and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of this Project. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, marital status, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
 - b. Age. In accordance with the Age Discrimination in Employment Act (ADEA) of 1967, as amended, 29 U.S.C. Sections 621 through 634, and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act", 29 CFR Part 1625, prohibit employment discrimination by Contractor against individuals on the basis of age, including present and prospective

employees. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

- c. Disabilities. In accordance with Section 102 of the Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Contractor agrees that it will comply with the requirements of the Equal Employment Opportunity Commission (EEOC), "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR, Part 1630, pertaining to employment of persons with disabilities and with their responsibilities under Titles I through V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions.
 - d. Segregated Facilities. Contractor certifies that their company does not and will not maintain or provide for their employees any segregated facilities at any of their establishments, and that they do not and will not permit their employees to perform their services at any location under the Contractor's control where segregated facilities are maintained. As used in this certification the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin because of habit, local custom, or otherwise. Contractor agrees that a breach of this certification will be a violation of this Civil Rights clause.
- 3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation, made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and the regulations relative to non-discrimination on the grounds of race, color, creed, sex, disability, age or national origin.
 - 4) Sanctions of Non-Compliance. In the event of Contractor's non-compliance with the non-discrimination provisions of this Contract, Public Agency shall impose such Contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to: 1) Withholding of payments to Contractor under the Contract until Contractor complies, and/or; 2) Cancellation, termination or suspension of the Contract, in whole or in part.

Contractor agrees to include the requirements of this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

DISADVANTAGED BUSINESS PARTICIPATION

This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, "*Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*", therefore, it is the policy of the Department of Transportation (DOT) to ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in the performance of DOT-assisted contracts.

- 1) Non-Discrimination Assurances. Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out all applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or other such remedy as public agency deems appropriate. Each subcontract Contractor signs with a subcontractor must include the assurance in this paragraph. (See 49 CFR 26.13(b)).

- 2) Prompt Payment. Contractor is required to pay each subcontractor performing Work under this prime Contract for satisfactory performance of that work no later than thirty (30) days after Contractor's receipt of payment for that Work from public agency. In addition, Contractor is required to return any retainage payments to those subcontractors within thirty (30) days after the subcontractor's work related to this Contract is satisfactorily completed and any liens have been secured. Any delay or postponement of payment from the above time frames may occur only for good cause following written approval of public agency. This clause applies to both DBE and non-DBE subcontractors. Contractor must promptly notify public agency whenever a DBE subcontractor performing Work related to this Contract is terminated or fails to complete its Work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Contractor may not terminate any DBE subcontractor and perform that Work through its own forces, or those of an affiliate, without prior written consent of public agency.
- 3) DBE Program. In connection with the performance of this Contract, Contractor will cooperate with public agency in meeting its commitments and goals to ensure that DBEs shall have the maximum practicable opportunity to compete for subcontract work, regardless of whether a contract goal is set for this Contract. Contractor agrees to use good faith efforts to carry out a policy in the award of its subcontracts, agent agreements, and procurement contracts which will, to the fullest extent, utilize DBEs consistent with the efficient performance of the Contract.

ENERGY CONSERVATION REQUIREMENTS

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plans issued under the Energy Policy and Conservation Act, as amended, 42 U.S.C. Sections 6321 *et seq.* and 41 CFR Part 301-10.

FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Contract between public agency and the FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by the DOT, as set forth in the most current FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. Contractor agrees not to perform any act, fail to perform any act, or refuse to comply with any public agency requests that would cause public agency to be in violation of the FTA terms and conditions.

NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

Agency and Contractor acknowledge and agree that, absent the Federal Government's express written consent and notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to agency, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract.

Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS

Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Contract. Upon execution of the underlying Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract Work is being performed.

In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.

Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307 (n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

Contractor agrees to include the above clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

State Notice Addendum

The National Cooperative Purchasing Alliance (NCPA), on behalf of NCPA and its current and potential participants to include all county, city, special district, local government, school district, private K-12 school, higher education institution, state, tribal government, other government agency, healthcare organization, nonprofit organization and all other Public Agencies located nationally in all fifty states, issues this Request for Proposal (RFP) to result in a national contract.

For your reference, the links below include some, but not all, of the entities included in this proposal:

http://www.usa.gov/Agencies/Local_Government/Cities.shtml

<http://nces.ed.gov/globallocator/>

<https://harvester.census.gov/imls/search/index.asp>

<http://nccsweb.urban.org/PubApps/search.php>

<http://www.usa.gov/Government/Tribal-Sites/index.shtml>

<http://www.usa.gov/Agencies/State-and-Territories.shtml>

<http://www.nreca.coop/about-electric-cooperatives/member-directory/>

<https://sos.oregon.gov/blue-book/Pages/state.aspx>

<https://portal.ehawaii.gov/government/>

<https://access.wa.gov/governmentagencies.html>