



INVITATION FOR BID

Unleaded Gasoline

The Lower Pioneer Valley Educational Collaborative invites bids for the purchase of **Unleaded Gasoline**, on a 3 year contract. Bids may be picked up at the LPVEC, 174 Brush Hill Avenue, West Springfield, MA 01089 after **4/7/14 at noon** or by email: pschroeder@lpvec.org or by calling 413-735-2200 after said time. Completed bids are to be sent to the LPVEC Office, marked on the outside of the bidder's envelope "**BID: Unleaded Gasoline**" and will be publicly opened on **4/28/14 at 10 a.m.** No bids will be accepted after this time. The LPVEC, acting for the participating school districts and municipalities, reserves the right to waive any informalities in any bid, or to reject any or all bids, if it be in the public interest to do so.

Paul Schroeder
Manager, Energy Services

Lower Pioneer Valley Educational Collaborative

Anne McKenzie, Chief Procurement Officer

Date: **April 7, 2014**

LOWER PIONEER VALLEY EDUCATIONAL COLLABORATIVE
174 BRUSH HILL AVENUE, WEST SPRINGFIELD, MA 01089 PHONE 413-735-2200 FAX 413-735-2280
SERVING AGAWAM : EAST LONGMEADOW : HAMPDEN-WILBRAHAM : LONGMEADOW : LUDLOW : SOUTHWICK-TOLLAND-GRANVILLE : WEST SPRINGFIELD

IFB Unleaded Gasoline, LPVEC Cooperative Bid

SPECIFICATIONS for the PURCHASE of UNLEADED GASOLINE
INVITATION FOR BIDS

The Lower Pioneer Valley Educational Collaborative and each other Awarding Authority that form the Western Massachusetts Fuel Cooperative are soliciting sealed bids for Unleaded Gasoline for the fiscal year starting July 1, 2014 through June 30, 2015 with the option of renewal for two additional one year periods. The specific delivery sites, tank sizes and the estimated yearly gasoline consumption is included for each of the Awarding Authorities in Attachments 1 and 2. The successful vendor(s) will be expected to execute a separate service contract with each individual Awarding Authority that they have been awarded.

Questions must be made **in writing**. Contact Paul W. Schroeder, Manager of Energy Services, LPVEC, pschroeder@lpvec.org

1. The Awarding Authorities have been grouped into four Sections. The specific Awarding Authorities are listed by Sections in Attachments 1 and 2. Section 1 is for Franklin County, Section 2 is for Hampshire County, Section 3 is for Hampden County, Section 4 is for Metered Pump Truck Deliveries in all 3 counties. Only one vendor will receive the award per Section. The same vendor may be awarded more than one Section. The Trailer Load Delivery is defined as a minimum of 7,000 gallons. Less Than Trailer Load Deliveries is defined as under 7,000 with a minimum of 1,000 gallons. Metered Pump Truck Deliveries is defined as under 1,000 gallons or where a trailer delivery cannot be made.
2. The tank locations, tank sizes and estimated needs of each awarding authority are listed, by Section, on separate spread sheets in Attachments 1 and 2. Vendors are encouraged to bid on one, more than one or all Sections.
3. This bid is priced as a margin over the Daily New Haven Low Spot Market pricing as published in the Journal of Commerce, Oil Price Daily, Unbranded Ethanol Gasoline. (see Section A, item 9). We are asking for your Margin and Overhead price that includes all delivery charges, overhead and profit (not including the cost of fuel or taxes) expressed to four (4) decimal places for any listed grade of unleaded ethanol gasoline.
4. For Trailer Load and Less than Trailer Load Deliveries, each Awarding Authority's estimated annual use is indicated in Attachment 1. The award will be given to the best price of a responsible and responsive bidder for this type of delivery. The best price will be determined by weighting the margin & overhead bids as follows:

50% to Trailer Load Deliveries and 50% to Less than Trailer Load Deliveries.

For example: The bid for Section 2 is a margin & overhead of \$.06 for Trailer Load and \$.11 for Less than Trailer Load. The Margin & overhead weighted average would be:
 $.50 \times \$0.06 + .50 \times \$0.11 = \$0.085$ which would be the comparison price for awarding

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purposes. The weighted average price may go out to as many decimal places as necessary to determine the best price.

5. For Metered Pump Truck Deliveries, each Awarding Authority's estimated annual use is indicated in Attachment 2. The best price will be determined by the lowest bid of a responsible and responsive bidder for this type of delivery.
6. The Awarding Authorities are exempt from all Federal Taxes and from the Massachusetts Underground Storage Tank Tax and State Sales Tax. **Do Not include taxes in the prices quoted as they will be factored in after the bid award.** The Awarding Authorities will provide tax exempt certificates when requested.
7. The following attachments to this Bid are included:
 - Attachment 1.: List of participating Awarding Authorities by Section, for Trailer Transport.
 - Attachment 2.: List of participating Awarding Authorities for Metered Pump Truck.
 - Attachment 3.: Certificate of Non-Collusion.
 - Attachment 4.: Tax Compliance Certification
 - Attachment 5.: Business Reference Form
9. Separate contracts will be executed by each of the participating Awarding Authorities in this Cooperative Bid. Each Awarding Authority will be billed separately.
10. Upon mutual agreement of the successful bidder in a Section and any Awarding Authority not included in this bid, but within the political boundaries of a Section as defined in this bid, that new Awarding Authority may obtain the same pricing structure as the other Awarding Authorities in that section.

This document is intended to perform as a guide and any omission of any specific item or failure to mention any requirements specifically shall not relieve the vendor from full and complete responsibility in furnishing a satisfactory fuel supply and delivery.

Submit one signed original and one copy of each bid, including all submittals. (Do not copy and send the entire bid specifications, only the forms you need.) All bids must be received at the Lower Pioneer Valley Educational Collaborative, 174 Brush Hill Ave., West Springfield, MA 01089, 413-735-2200 by 10 a.m., Monday, April 28, 2014. At that time and place, all bids received will be opened and publicly read. Bids must be sealed and plainly marked "BID: Unleaded Gasoline" on the lower left-hand corner of the envelope. Bids may be corrected, modified or withdrawn by written addendum or request before 10 a.m., Monday, April 28, 2014. Bids cannot be corrected, modified or withdrawn after this deadline. Bids will be awarded on or before June 30, 2015.

A Bid Deposit in the form of a certified check or cashier's check or bid bond, from a responsible bank, trust company or insurance institution, in the amount of \$1,000, payable to the "Lower Pioneer Valley Educational Collaborative" must be included with your bid. Successful bidders will be expected to execute a contract with each Awarding Authority within 30 days of the award of the bid. If a proper contract cannot be executed by the

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awarded vendor, the bid deposit will become the property of the Awarding Authority(ies) affected as liquidated damage to that (those) Awarding Authority(ies). Bid deposits will be returned to the unsuccessful bidders within 10 days of the execution of a contract with each Awarding Authority.

The Lower Pioneer Valley Educational Collaborative and the Awarding Authorities will only consider responsive bids from responsible contractors for a contract award. A responsive bid is one which complies fully with all submission requirements stated in sections B and C of this Invitation for Bids. Any bid which does not comply with all submission requirements may be rejected as non-responsive. A responsible contractor is one who demonstrably possesses the skill, ability, financial stability and integrity necessary to faithfully perform the work called for in the procurement, judged solely on the basis of the contractor's performance on recent and current contracts, financial statements and the references checked by the Lower Pioneer Valley Educational Collaborative or the Awarding Authorities.

If the contract is awarded to a bidder who did not submit the lowest price, the Lower Pioneer Valley Educational Collaborative or the Awarding Authorities, will set forth a written explanation of the reasons for the award.

PLEASE READ ALL TERMS OF THE BID SPECIFICATION AND EVALUATION CRITERIA. BY SUBMITTING A BID YOU ARE LEGALLY BINDING YOURSELF TO THE TERMS OF THIS BID SPECIFICATION.

EACH AWARDING AUTHORITY reserves the right to accept any bid, in whole or in part, or to reject any or all bids as deemed to be in its best interest. EACH AWARDING AUTHORITY reserves the right to waive any informalities or technicalities in the bid as may be in its best interest and to correct any award erroneously made as a result of a clerical error on the part of the Awarding Authority.

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SECTION A. Minimum Contract Criteria

All bidders must review and agree to the minimum contract provisions. The successful bidder will be expected to execute separate service contracts with each individual Awarding authority including terms and conditions that are substantially identical to the terms listed in this section. In the event the successful bidder refuses to execute contracts including these terms, the proceeds of their bid deposit will become the property of the Lower Pioneer Valley Educational Collaborative or the individual Awarding Authority as liquidated damages. All contracts shall meet the following Minimum Criteria in order to be considered:

ATTACHED HERE IS AN 8 PAGE CONTRACT DOCUMENT

CONTRACT

THIS CONTRACT is entered into by and between the

whose principal office is located at < CUSTOMER NAME>
<ADDRESS>
<CITY, STATE ZIPCODE>
(hereinafter referred to as “Customer”)

and <NAME OF THE VENDOR>
whose principal office is located at <ADDRESS>
<CITY, STATE ZIPCODE>
(hereinafter referred to as “Vendor”). **WITNESSETH: THAT**

In consideration of the Contract Price to be paid the Vendor, as set forth in Exhibit A, (Vendor's bid dated April 28, 2014), hereto, for the Purchase and Delivery of Unleaded Gasoline and of the mutual promises and agreements hereinafter set forth, it is understood and agreed by and between the parties hereto as follows:

1. The terms of this printed contract are supplemented, altered or amended as indicated in the Lower Pioneer Valley Educational Collaborative's Specifications for Unleaded Gasoline, INVITATION for BIDS, dated April 7, 2014 and the bid response by the Vendor, dated April 28, 2014, which both are hereby, by reference, included in this contract.
2. No claim for additional compensation on account of extra labor or materials furnished shall be made unless such additional labor and materials are furnished upon written request from the Customer.
3. **Fuel Specification:** Unleaded gasoline delivered under this contract will comply with: American Society of Testing Materials; and unleaded gasoline specification requirements as set forth in the most current revision of ASTM Designation D-439 for gasoline, amended to comply with regulations of the Massachusetts Department of Environmental Protection; and any other applicable Federal and/or Commonwealth regulations and laws. Reformulated gasoline shall contain ethanol where required by law.

For the purposes of this specification, grades of unleaded gasoline shall be defined as follows:

- Unleaded Regular - 87 octane
- Unleaded Mid-Grade - 89 octane
- Unleaded Premium - 93 octane

In the event a higher grade of gasoline than the grade ordered is delivered to a site, the price charged by the Vendor will be the price for the grade ordered. The Customer is not required to accept and will not pay for delivered unleaded gasoline which is of a lower grade than the grade ordered.

The Customer reserves the right to take samples of fuel for analysis, either at the shipping point or the delivery point, in order to verify the quality of the product being supplied. The Vendor will be notified of such testing and shall be entitled to have a representative present when samples for analysis are taken and shall be entitled to take samples like the samples to be analyzed. If tests show that the fuel is substandard, the Vendor shall immediately remove the same from any deliveries made into the Awarding Authority's tank(s) and, on failure to do so within 12 hours of notification, the Customer will remove it at the expense of the vendor. The Vendor must then supply fuel meeting the standards within 24 hours. If the Vendor cannot deliver standard compliant fuel within 24 hours, the Customer will purchase compliant fuel from another supplier and deliveries will be suspended until appropriate standards are met. Any damages or losses incurred by the Customer, including the cost differential in excess of the contract price, damage to the facility or equipment, costs for removal of substandard fuel or other damages and losses, will be charged to the Vendor.

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4. **Delivery:** The Vendor must contact the Customer to establish operational detail about delivery prior to July 1, 2014. Deliveries are to be made within 48 hours, or the two working days, from the date of notification. Delivery of fuel must be made on days and during hours that are acceptable to the Customer.
 - a. In the case of emergencies like fires, severe weather, acts of terrorism or other civic or natural disaster, an emergency delivery of fuel may be necessary. If an emergency delivery is necessary, the Vendor will make the delivery within 12 hours of notification. There will be no extra charge for these types of deliveries.
 - b. If a site requests an emergency delivery due to its own neglect to order fuel in a timely manner and not for an emergency as described in the foregoing paragraph, and the Vendor is forced to make a delivery on a Sunday or Holiday or at a time of day not between 5 AM and 5 PM Monday through Saturday, the Vendor will be paid an additional delivery fee, not to exceed \$80.00 per each delivery as herein defined.
 - c. Deliveries must be in compliance with all applicable Local, State and Federal laws and regulations.
 - d. The Customer shall be responsible to keep clear the fill pipes and access to the fill pipes. If the Customer schedules a delivery and fails to keep the area clear and the vendor cannot make the scheduled delivery, the Vendor will be entitled to an additional delivery fee, not to exceed \$27.50 per 15 minutes that each aborted delivery creates. This fee will be based on the transporter's billing of time to the Vendor. Documentation of this fee is required before payment.
 - e. It is understood that the delivery person of the motor carrier has the final say as to how much fuel a given tank can safely take. Massachusetts regulations require a tank not to be filled to more than 90% of nominal capacity. If the Customer orders more fuel than the tank can safely take, the delivery person will unload as much fuel as can be safely delivered in the tank and notify the Customer of the situation. The remaining gallons may be delivered to another tank owned by the Customer with the additional split load charge not to exceed \$27.50 per 15 minutes that each additional delivery creates. This fee will be based on the transporter's billing of time to the Vendor. Documentation of this fee is required before payment. This fee cannot be charged if the other tank(s) are at the same location.
 - f. Demurrage: At the point of destination, the Customer shall promptly designate the tank or tanks into which the load is to be dumped. One hour free time shall be allowed Customer to complete unloading. One hour free time will be allowed for unloading at the stop off point at destination on shipments stopped in transit for partial unloading (split loads). After expiration of free time specified in the foregoing, demurrage shall accrue at a rate not to exceed \$27.50 per 15 minutes the carrier is delayed at the stop off point due to conditions over which the motor carrier has no control. Documentation of this fee is required before payment.
5. **Spillage:** While performing work under this contract, the Vendor shall be responsible for completing clean up of any spills or accidental releases to the environment (pursuant to MGL c. 21E and other relevant regulations) at no cost to the Customer. The Vendor shall notify all local, state and federal authorities as required by law in the event of such a release or threat of release. The Vendor will immediately notify the user facility contact person in the event of a spill, release, or threat of release to the environment and prior to initiating clean up response actions. If prior notification of the facility contact person is not possible, then the Vendor shall take appropriate response actions, and notify the contact person as soon as possible thereafter. In either case, the Vendor must provide a written summary to the contact person, setting forth the response actions taken.
6. **Measurement:** The quantity of fuel delivered shall be calculated as follows:
 - a. For Trailer Load deliveries (7,000 gallons or more per delivery) or Less than Trailer Load deliveries (under 7,000, minimum of 1,000 gallons per delivery), a verified copy of the Vendor's supplier's Statement of Delivery into the Vendor's trailer (Bill of Lading) will be required. The signed Statement must be supplied to the site at the time of delivery unless the site has requested other arrangements.

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- b. For Metered Pump Truck deliveries (less than 1,000 gallons per delivery or where a trailer delivery cannot be made) each truck must be equipped with a meter that automatically prints a Delivery Slip showing the number of gallons delivered. The signed Delivery Slip must be supplied to the site at the time of delivery unless the site has requested other arrangements.
 - c. Trucks must be equipped with a measuring stick and the driver must use this to confirm delivery amounts, if requested. The Customer reserves the right to inspect, weigh or otherwise examine, delivery trucks to verify the quantity being delivered. Further, facilities management personnel may choose to physically measure the fuel level in a storage tank before and after a delivery ("sticking") in order to verify the amount delivered.
7. **Billing:**
- a. All invoices for fuel will be billed per US gallon to one tenth (.1) of a gallon. The Vendor will invoice the Customer on a per delivery basis. The invoice will show the specific facility and tank delivered to. All amounts will be in US dollars. The invoices will include all charges for fuel delivery, including all applicable taxes. The Customer is tax exempt from any federal taxes and from state Underground Storage Tank and Massachusetts state sales taxes.
 - b. Electronic or faxed invoices may be requested by the Customer. In such cases, the Vendor will e-mail or fax to the Customer an invoice on the same day as the invoice date. The Customer will also require that the Vendor mail an original invoice in addition to the electronic or faxed invoice.
8. **Term of Service:** This contract is for the fiscal year 2015, commencing July 1, 2014 and ending June 30, 2015. This contract may be renewed up to two additional twelve month periods to a maximum of three years. At least thirty (30) days prior to the expiration date of this contract or contract renewal, the Customer will send written notification to the Vendor of its intention to exercise the renewal option. In so doing, the same terms and conditions will be applicable, including the price differential as bid. Renewal of the contract will be awarded at the sole discretion of each Customer and is not subject to agreement or acceptance by the Vendor.
9. **Determination of Pricing:** There are three types of deliveries for determining the price for fuel under this contract. In each case the charged price is determined by a published index price plus the Margin and Overhead bid price that the Vendor was awarded. The index used is the Daily New Haven Low Spot Market Price, being the lowest wholesale price for the grade of gasoline ordered, reported for New Haven, CT, as published daily in the OPIS, Oil Price Daily, Gasoline Prices, Reseller Rack Prices, Unbranded Ethanol Gasoline for the day that the fuel is delivered by the vendor, PLUS the Margin and Overhead bid price for the type of delivery that the Vendor was awarded.
- a. Trailer Load Deliveries (minimum of 7,000 gallons)
 - b. Less than Trailer Load Deliveries (minimum 1,000 gallons)
 - c. Metered Pump Truck Deliveries (under 1,000 gallons or where a trailer cannot deliver)
 - d. The Margin and Overhead bid price is defined as the price the Vendor was awarded on the Bid Form for the type of delivery indicated that the Vendor submitted to the Customer, and is hereby included by reference in this contract.
 - e. Cash Market Blow Out: It is understood that under extreme circumstances (ie. Hurricanes or extreme cold weather) the "Cash Market" (the price the wholesale supplier of gasoline can get for his product) will "blow out" (not be reflected in the OPIS, Oil Price Daily due to extreme volatility). At these times a temporary adjustment to the index price for Daily Spot Market Delivery, may be made upon request of the Vendor. The Vendor must submit written documentation of the actual cost incurred by the Vendor from its suppliers and are unavoidable. The request must be reasonable, well substantiated, effect the whole region and documented. Price adjustments will be the actual cost plus the bid margin and only granted on a case by case basis. In no case can this adjustment be made

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permanent or last longer than the extreme circumstances that cause this condition, usually no more than a few days.

10. **Changes in Locations and Tanks:** During the duration of this contract, it may be necessary for the Customer to close a location, open a new location and/or change a fuel oil tank. The Customer will notify the Vendor of any changes in a timely manner. Changes that result in no change in type of delivery (i.e.. Trailer Transport or Metered Pump Truck) will continue to receive the same Margin and Overhead bid price differential that the Vendor was awarded as set forth in Exhibit A. For changes that result in a change in type of delivery, delivery will be negotiated with the vendor awarded the geographical section that the Customer falls under, if the Customer does not already have a contract with that Vendor.
11. **Title:** The Vendor shall warrant good title to all fuel delivered. Title of the fuel will pass to the Customer at the delivery point.
12. **Incorporated by Reference:** The Vendor's bid, Certificate of Non-Collusion, Tax Compliance Certificate and any other submissions, and the Lower Pioneer Valley Educational Collaborative's Invitation for Bids are hereby incorporated into this contract.
13. **Liability Insurance:** The Vendor shall provide a minimum general liability insurance coverage of \$1,000,000 and Workers' Compensation insurance as required by the Commonwealth of Massachusetts. The Vendor shall provide motor vehicle liability insurance in the amount of \$500,000 per person and \$1,000,000 per incident, including all risk property damage. The Vendor is required to furnish a certificate of insurance with each Customer named as an insured party. In addition, the insurance company will agree to give notification to each Customer of any revocation and/or cancellation, at least fifteen (15) days before said revocation or cancellation becomes effective. If the insurance policy is revoked or canceled, the Customer shall have the option of terminating this contract. The Vendor will hold each Customer harmless of and from any liability as a result of the vendor's operations under this contract.
14. **Liability:** Vendors are responsible for paying for any damage they cause at a site including fuel spills during delivery. The Customer is responsible for the condition of its tanks, fill pipes and delivery pipes including fuel releases which occur subsequent to the delivery by the Vendor.
15. **Amendment/Waiver:** Changes to any of the provisions specified in this Contract can occur only when mutually agreed upon by the Vendor and the Customer, set forth in writing, and signed by both the Vendor and the Customer. All conditions, covenants, duties and obligations contained in this Contract can be waived only by written agreement by the parties. Forbearance or indulgence in any form or manner by a party shall not be a waiver, nor in any manner limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.
16. **Termination:** If, through any cause, the Vendor shall fail to fulfill in a timely or proper manner his obligations under this Contract, or if the Vendor shall violate any of the covenants, agreements, or stipulations of this Contract, the Customer shall thereupon have the right to immediately terminate this Contract upon written notice to the Vendor of such termination and specifying the effective date of termination. In the event the Customer shall exercise the right of termination herein provided, the Customer may relet or sublet the Contract. Any damage incurred through any default, shall be a charge against any amounts due from the Customer to the Vendor hereunder.
17. **Personnel:** The Vendor represents that there has been or will be secured all personnel required for the performance of the work, services, and/or items to be provided under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Customer. All of the services required hereunder will be performed by the Vendor or under the supervision of the Vendor, and all personnel engaged in the work shall be fully qualified.

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18. **Independent Vendor:**

- a. It is expressly acknowledged by the parties hereto that the Vendor is an independent vendor, and nothing in this Contract shall be construed or interpreted to create an employer/employee relationship, joint venture relationship, or landlord/tenant relationship between the Vendor and the Customer. No rights or benefits of an employee of the Customer shall accrue or be vested in the Vendor under any personnel policies or benefit plans maintained by the Customer for the benefit of its employees. The Vendor shall not be entitled to any payment from the Customer in the nature of benefits under the Workers' Compensation Act for any accident, illness, or event occurring in or relating to the Customer and arising out of the Contractor's duties hereunder.
- b. Neither federal, nor state income tax, nor payroll tax of any kind will be withheld or paid by the Customer on behalf of the Vendor or the employees of the Vendor. The Vendor will not be treated as an employee with respect to the work performed hereunder for federal and state tax purposes. The Vendor understands that it is responsible to pay, according to law, its income tax. If the Vendor is not a corporation, the Vendor further understands that the Vendor may be liable for self-employment (social security) tax.

19. **Assignability:** The Vendor agrees not to assign or subcontract this Contract, or the compensation to be received under it, in whole or in part without the prior written consent of the Customer and no such assignment or subcontracting shall be valid or binding upon the Customer without such consent. Subject to the foregoing provisions, this Contract shall inure to the benefit of and be binding upon the representatives, successors or assigns of the parties hereto.

The Customer shall have the right to assign any and all fuel it has committed to the Fixed Price Futures Program to the Lower Pioneer Valley Educational Collaborative or to any other Customer in this Cooperative Bid.

20. **Force Majeure or Default:**

- a. Neither party will be liable to the other for failure or delay in fulfilling its obligations hereunder if such failure or delay is due to storm, flood, or other Act of God, or to fire, war, rebellion, insurrection, riots, or is the result of some order, rule or regulation of any federal, state, municipal, or other governmental agency. Each party will attempt to notify the other within 24 hours after becoming aware of such problem. Notwithstanding this paragraph, changes in the price of oil are not sufficient in and of themselves to invoke this clause.
- b. In the event that unforeseen market conditions or "force majeure" prevent the Vendor from performing their responsibilities under this contract, the Customer, along with the other participants in the Lower Pioneer Valley Educational Collaborative cooperative bid agree to treat this as an "emergency procurement".
- c. Recognizing the critical importance of the uninterrupted delivery of fuel products to the participating entities, the Lower Pioneer Valley Educational Collaborative, along with representatives of the participating governmental entities and the Vendor agree to negotiate the times of default as may be in the best public interest.
- d. In the event that it becomes necessary to rebid during the term of this contract or any renewal term of this contract, the successful bidder agrees to continue to provide the fuel products to any an all of the participating governmental entities, uninterrupted, for a period of up to 60 days at the negotiated cost. This negotiated cost is not to exceed that of the second low bid under the Lower Pioneer Valley Educational Collaborative Unleaded Gasoline, Invitation for Bids, dated June 22, 2006.

21. **Indemnification:** The Vendor shall release, indemnify and hold harmless the Customer, its departments, employees and agents from and against any and all liability, loss, damages, costs or expenses for personal injury or damage to real or tangible personal property which the Customer, its departments, employees and agents may sustain, incur or be required to pay, including the cost of attorneys' fees, arising out of or in connection with the performance of this Contract by reason of any negligent action/inaction or willful

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misconduct by the Vendor, its employees, agents, subcontractors, servants, or anyone directly or indirectly employed by any of them.

22. **Applicable Law:** The Vendor and the Customer agree that the laws of the Commonwealth of Massachusetts govern the validity, construction, interpretation and effect of this contract. In addition, the Vendor will comply strictly with all applicable local, state, and federal laws, ordinances, orders, rules and regulations. The Vendor further agrees to hold the Customer harmless from and against any liability, including penalties, which might be imposed by reason of any asserted or established violation of any such laws, ordinances, orders, rules and regulations.

23. **Payment Terms:**

- a. Unless other arrangements are made, all bills will be paid and Vendor receive payment within forty-five (45) days of invoice date, provided that the Vendor faxes or emails a copy of the invoice to the Customer the same day as the billing, with a hard copy to follow. The faxed or emailed invoice will constitute the date of receipt of invoice.
- b. The Vendor may, at its discretion, suspend future deliveries to a Customer if the Customer has not paid an invoice within sixty (60) days of invoice date and continue to do so until Customer's account is back within forty-five (45) days.
- c. Arrangements for Electronic Payment may be requested by the Customer and will be supplied by the Vendor.
- d. No late fees or interest on overdue bills will be charged under this contract.

24. **Contractor's Breach and Awarding Authority's Remedy:** Failure of the Vendor to comply with any of the terms or conditions of this Contract shall be deemed a material breach of this Contract, and the Customer shall have all of the rights and remedies provided in the Contract documents, the right to cancel, terminate or suspend the Contract in whole or in part, the right to maintain any and all actions in law or equity or other proceedings with respect to a breach of this Contract, including damages and specific performance, and the right to select among the remedies available to it by all of the above.

25. **Audit, Inspection and Record Keeping:** At any time during normal business hours, and as often as the Customer may deem it necessary, there shall be made available in the office of the Vendor for the purpose of audit, examination, and/or to make excerpts or transcripts, all records, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Contract. The Customer shall be entitled to reproduce any or all such documents at its own expense, for which provision shall be made at the time the need for reproduction arises.

26. **Fiscal year; appropriation:**

- a. The fiscal year of the Customer is the twelve-month period ending June 30 of each year. The obligations of the Customer under this Contract, or under any amendment to this Contract, for any fiscal year, are subject to the appropriation to the Customer of funds sufficient to discharge the Awarding Authority's obligations which accrue in that fiscal year, and authorization to spend such funds for the purposes of this Contract.
- b. If, for any fiscal year during the term of this Contract, funds for the discharge of the Customer's obligations under this Contract are not appropriated and authorized, or funds so appropriated and authorized are insufficient for that purpose, then this Contract shall terminate as of the last day of the preceding fiscal year, or when such appropriated and authorized funds are exhausted, whichever is later, without liability to the Customer for damages, penalties or other charges on account of such termination.

27. **Conflict of Interest:** Both the Customer and the Vendor stipulate to the applicability of State Conflict of Interest Law (M.G.L. c. 268A), and this Contract expressly prohibits any activity which shall constitute a

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violation of that law. The Vendor shall be deemed to have investigated its applicability to the performance of this Contract; and by executing the Contract documents the Vendor certifies to the Customer that neither it nor its agents, employees, or subcontractors are thereby in violation of M.G.L. c. 268A.

28. **Contractor's Representations and Certifications:** By signing this Contract, the Vendor represents and certifies under the penalties of perjury that:
- a. the Vendor is a duly organized and validly existing corporation, or either a partnership, trust, or sole proprietorship, and is qualified to do business in good standing in the Commonwealth of Massachusetts, with the power and authority to consummate the transactions contemplated herein;
 - b. pursuant to M.G.L. c. 62C, §49A, the Vendor has filed all state tax returns, paid all taxes and complied with all laws of the Commonwealth relating to taxes;
 - c. pursuant to M.G.L. c. 151A, §19A, the Vendor has complied with all the laws of the Commonwealth relating to contributions and payments in lieu of contributions to the Employment Security System;
 - d. the Vendor has filed with the Secretary of State all certificates and annual reports required pursuant to M.G.L. c. 158B, §109 (business corporation), or M.G.L. c. 180, §26A (nonprofit corporation), or M.G.L. c. 181, §4 (foreign corporation), whichever is applicable;
 - e. the Vendor provides Workers' Compensation Insurance and all other insurance benefits required by M.G.L. c. 152;
 - f. the Vendor is not presently debarred or suspended from providing goods and/or services to the Customer under the provisions of M.G.L. c. 29, §29F, or an other applicable debarment or suspension provision of any other chapter of the General Laws or federal law, or any rule or regulation promulgated thereunder;
 - g. the person signing this Contract certifies that he/she has been authorized by the Vendor to commit the Vendor contractually and had been authorized to execute this Contract on its behalf;
 - h. the bid upon which this Contract was based was made without collusion or fraud with any other person and will in all respects bona fide and fair (as used in this Paragraph, the word "person" shall mean any natural person, joint venture, partnership, corporation, or other business or legal entity); and
 - j. the Vendor has paid all real estate, personal property or excise tax, water charges, fines or any other municipal lien charges due to the Customer.
29. **Minimum Wage/Prevailing Wage:** The Vendor will carry out the obligations of this Contract in full compliance with all the requirements imposed by or pursuant to M.G.L. c. 151, §1, et. seq. (Minimum Wage Law) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended. The Vendor will at all times comply with the wage rates as determined by the Commission or the Department of Labor and Industries, under the provisions of M.G.L. c. 149, §§ 26-27D (Prevailing Wage), to the extent same applies to this Contract.
30. **Nondiscrimination and Equal Employment:** The Vendor shall carry out the obligations of this Contract in compliance with all of the requirements imposed by or pursuant to Federal, State, and local ordinances, statutes, rules, and regulations prohibiting discrimination in employment, including, but not limited to, Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973, and M.G.L. c. 151B, Massachusetts Executive Order 74, as amended by Executive Orders 116, 143, and 227, and any other executive orders, rules, regulations, and requirements relating thereto enacted by the Commonwealth of Massachusetts as they may from time to time be amended. The Vendor shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation.

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31. **Notices:** Unless a party is instructed otherwise by a notice properly given hereunder, all notices and other communications given or made under this Agreement shall be effective only when given or made by personal delivery or by certified mail, return receipt requested, directed as follows:

a) In the case of a notice or other communication to the Vendor:

with a copy to:

b) In the case of a notice or other communication to the Customer:

with a copy to:

Paul W. Schroeder, Manager, Energy Services
L.P.V.E.C.
174 Brush Hill Ave.
West Springfield, MA 01089

This section shall not apply to reports, bills, or payments sent by one party to the other which may be sent by ordinary mail.

32. **Partial Invalidity:** In the event that any clause or provision of this Agreement or any part thereof shall be declared invalid by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Agreement.

33. **Application and Survival of Certain Provisions:** All provisions of this Agreement providing for limitation of or protection against liability and the parties' rights to payments and remedies on default shall apply to the full extent permitted by law. All of said provisions and the representation of each party shall survive termination or cancellation of this Agreement.

34. **Further Actions:** Each of the parties agrees that it shall hereafter execute and deliver such further instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Contract and as are consistent with the terms hereof.

35. **Captions:** The captions of the sections in this Contract are for convenience and reference only and in no way define, limit or affect the scope or substance of any section of this Agreement.

36. **Binding of Successors:** This Contract shall be binding upon the Vendor, its assigns, transferees, and/ or successors in interest (and where not corporate, the heirs and estate of the Vendor).

37. **Tax Exempt Certification:** The Vendor agrees to provide the Customer with the appropriate tax-exempt applications in order to exempt it from state and federal sales taxes on fuel and to not charge the Customer those taxes, where applicable. (Reference MG. L. 64H, Sec. 6 (I)(d) and I.R.S. Code Ch. 26, Sec. 483 Subchapter F sec. 501 and any other applicable sections of law.)

38. **Full Agreement:** This contract and any properly executed amendments to this contract constitute the entire contract between the Customer and the supplier.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed and sealed by their authorized representatives.

<VENDOR'S NAME>

<NAME OF THE CUSTOMER>

By: <PRINTED NAME>

By: <PRINTED NAME>

Its: <TITLE>

Its: <TITLE>

Date: _____

Date: _____

SECTION B. Minimum Evaluation Criteria

The Minimum Evaluation Criteria are the standards that will be used to evaluate whether the bid is "responsive" and to identify "responsible" bidders. The minimum standards for this bid are as follows:

1. Prices will be stated in dollars per gallon, to four (4) decimal places, for the Contractor's Margin and Overhead as stated on the Bid Form, delivered to the facilities of each Awarding Authority listed within each Section. The bid price Margin and Overhead will be divided as follows for each Section:
 - a. Trailer Load Delivery
 - b. Less than Trailer Load Delivery
 - c. Metered Pump Truck Delivery

Bid Prices are for Margin and Overhead only. DO NOT include the cost of fuel or taxes.

2. Bidders may bid on deliveries for one, more than one or all the listed Sections. Bidders **must** give a bid for both Trailer Load and Less than Trailer Load Deliveries for Sections 1-3.
3. For Trailer Load and Less than Trailer Load Deliveries, each Awarding Authority's estimated annual use is indicated in Attachment 1. The award will be given to the best price of a responsible and responsive bidder for this type of delivery. The best price will be determined by weighting the margin & overhead bids as follows:

50% to Trailer Load Deliveries and 50% to Less than Trailer Load Deliveries.

For example: The bid for Section 2 is a margin & overhead of \$.06 for Trailer Load and \$.11 for Less than Trailer Load. The Margin & overhead weighted average would be:
 $.50 \times \$.06 + .50 \times \$.11 = \$.085$ which would be the comparison price for awarding purposes. The weighted average price may go out to as many decimal places as necessary to determine the best price.

4. For Metered Pump Truck Deliveries, each Awarding Authority's estimated annual use is indicated in Attachment 2. The best price will be determined by the lowest bid of a responsible and responsive bidder for this type of delivery.
5. The successful bidder shall provide a minimum general liability insurance coverage of \$1,000,000 and Workers' Compensation insurance as required by the Commonwealth of Massachusetts. The contractor shall provide motor vehicle liability insurance in the amount of \$500,000 per person and \$1,000,000 per incident, including all risk property damage. Bidders must furnish a certificate or letter from an insurance company, legally authorized to act within the Commonwealth of Massachusetts, indicating that the bidder is insurable to the extent required by these specifications. The successful bidder will be required to furnish a certificate of insurance with each Awarding Authority named as an insured party. In addition, the insurance company will agree to give notification to each

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awarding Authority of any revocation and/or cancellation, at least fifteen (15) days before said revocation or cancellation becomes effective. If the insurance policy is revoked or canceled, the contract shall be considered terminated. The contractor will hold each Awarding Authority harmless of and from any liability as a result of the contractor's operations under this contract.

6. The bidder must be in compliance with any and all Federal and State requirements involved with the sale and transportation of gasoline fuel.
7. The bid must be accompanied by a signed Certificate of Non-Collusion (attachment 2).
8. Each bid must be signed, indicating that the bidder promises to provide the supply and service as specified for the bid price.
9. The bidder will provide on the enclosed form (attachment 4), with the bid, three references from Massachusetts based companies, schools, institutions and governments indicating their names, addresses, telephone numbers, contact persons, dates of service and annual volume of fuel service. The references will demonstrate that during at least the past **five** (5) years, the bidder has provided safe and efficient services for organizations which have needs that are similar to those of this cooperative. One reference will be from a former customer no longer buying fuel from the bidder.
10. The bidder will provide Financial Information, in the form of a narrative, indicating that the bidder has the financial strength and reliability; including corporate history, date of establishment, initial (if founded within the last ten years) and current capitalization, corporate affiliates or joint venture partners, bank reference and availability of financial support such as parent guarantees, letters of credit, and performance bonds demonstrating access to sufficient capital, to handle contracts of this size. An audited financial statement may be requested as evidence. This information will be held as confidential if so marked by the bidder.
11. The bidder will provide, with the bid, a completed Tax Compliance Certification (attachment 3).
12. A bid deposit in the form of a certified check or cashier's check or bid bond, from a responsible bank, trust company or insurance institution, in the amount of \$1,000, payable to the "LOWER PIONEER VALLEY EDUCATIONAL Collaborative" **MUST BE INCLUDED WITH YOUR BID**. The deposit of the successful bidders will be returned upon the execution of the contract and, in the event the bidder refuses to execute a contract within 10 days of the bid award, the proceeds of said deposit will become the property of the Lower Pioneer Valley Educational Collaborative or the affected Awarding Authorities as liquidated damages. The deposits of all rejected bidders will be returned within ten (10) calendar days following the awarding of contracts by the Awarding Authorities.

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SECTION C. **Submission Requirements**

USE THIS AS A CHECK LIST TO MAKE SURE YOUR BID IS COMPLETE:

1. Submit one signed original and one copy of each bid, including all submittals. (Do not copy and send the entire bid specifications, only the forms you need.) All bids must be received at the Lower Pioneer Valley Educational Collaborative, 174 Brush Hill Ave., West Springfield, MA 01089, 413-735-2200 by 10 a.m., Monday, April 28, 2014. At that time and place, all bids received will be opened and publicly read. Bids must be sealed and plainly marked "BID: Unleaded Gasoline" on the lower left-hand corner of the envelope. Bids may be corrected, modified or withdrawn by written addendum or request before 10 a.m., Monday, April 28, 2014. Bids cannot be corrected, modified or withdrawn after this deadline. Bids will be awarded on or before June 30, 2015.
2. Bidder must include a signed certificate of non-collusion (attachment 3).
3. Bidder must include an insurance certificate or binder for all applicable insurance (section B5).
4. Bidder must include signed bids, on provided bid forms, to agree to provide the service and goods in accordance with this specification.
5. Bidder must include a signed Tax Compliance Certification (attachment 4).
6. Bidder must include appropriate references on the form provided (attachment 5), as described in this specification, section B8.
7. Bidder must include a financial statement as described in this specification, section B10.
8. Bidder must enclose a bid security deposit in the amount of \$1,000 (section B12).

NOTE: FAILURE TO SUPPLY ALL THE ABOVE ITEMS AND INFORMATION MAY RESULT IN YOUR BID BEING DISQUALIFIED.

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Bid Form
Section 1: Franklin County

Each Section shall apply only to the Awarding Authorities listed in the Section.

Daily New Haven Low, Unbranded Ethanol, Spot Market Price

Vendors Margin and Overhead above the low daily New Haven Spot Market price, as defined in Section A, item 9 of these bid specifications, for delivered various grades of unleaded gasoline:

a. Trailer Load Deliveries (minimum 7,000 gallons) \$ _____ per Gallon
(to 4 decimal places)

b. Less than Trailer Load Deliveries (minimum 1,000 gallons) \$ _____ per Gallon
(to 4 decimal places)

I do hereby agree to supply and deliver Unleaded Gasoline as specified:

Signature: _____ Date: _____

Name (Please Print): _____

Title: _____

Company: _____

Address: _____

City/State/Zip: _____

Phone: _____ Fax: _____

E-mail: _____

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Bid Form
Section 3: Hampden County

Each Section shall apply only to the Awarding Authorities listed in the Section.

Daily New Haven Low, Unbranded Ethanol, Spot Market Price

Vendors Margin and Overhead above the low daily New Haven Spot Market price, as defined in Section A, item 9 of these bid specifications, for delivered various grades of unleaded gasoline:

- a. Trailer Load Deliveries (minimum 7,000 gallons) \$ _____ per Gallon
(to 4 decimal places)

- b. Less than Trailer Load Deliveries (minimum 1,000 gallons) \$ _____ per Gallon
(to 4 decimal places)

I do hereby agree to supply and deliver Unleaded Gasoline as specified:

Signature: _____ Date: _____

Name (Please Print): _____

Title: _____

Company: _____

Address: _____

City/State/Zip: _____

Phone: _____ Fax: _____

E-mail: _____

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Bid Form

Section 4: Metered Pump Truck

Each Section shall apply only to the Awarding Authorities listed in the Section.

Daily New Haven Low, Unbranded Ethanol, Spot Market Price

Vendors Margin and Overhead above the low daily New Haven Spot Market price, as defined in Section A, item 9 of these bid specifications, for delivered various grades of unleaded gasoline:

a. Metered Pump Truck (under 1,000 gallons or where trailer cannot deliver)

\$ _____ per Gallon
(to 4 decimal places)

I do hereby agree to supply and deliver Unleaded Gasoline as specified:

Signature: _____ Date: _____

Name (Please Print): _____

Title: _____

Company: _____

Address: _____

City/State/Zip: _____

Phone: _____ Fax: _____

E-mail: _____