



**COOPERATIVE PURCHASING PROGRAM**  
 Houston-Galveston Area Council of Governments  
 3555 Timmons, Suite 120, Houston, TX 77027  
 Phone: 800-926-0234 Fax: 713-993-4548  
[www.hgacbuy.org](http://www.hgacbuy.org)

INVITATION TO SUBMIT COMPETITIVE:	<input type="checkbox"/> <b>BIDS</b>	<input checked="" type="checkbox"/> <b>PROPOSALS</b>
INVITATION No.: <b>RE04-11</b>	ISSUE DATE: <b>January 19, 2011</b>	
CATEGORY: <b>RETAIL ELECTRIC PROVIDER</b>		

**PURPOSE OF THIS INVITATION**

The Cooperative Purchasing Program (HGACBuy) of the Houston-Galveston Area Council of Governments is soliciting offerings for the furnishing of products and services described herein. These may be purchased by any of more than 5400 local government and non-profit member organizations in 44 states.

Responses must be submitted in an original and one (1) copy, and shall be subject to the terms, conditions, requirements and specifications detailed in the documents comprising this Invitation. Any responses submitted later than 1:00 p.m. on the due date will be returned unopened to the proposer.

**TENTATIVE PROCUREMENT SCHEDULE AND DETAILS**

<b>PRE-PROPOSAL CONFERENCE NOTICE</b>	December 15, 2010
<b>PRE-PROPOSAL CONFERENCE:</b>	January 4, 2011 @ 9:00 a.m. CT; H-GAC offices, 2nd floor
<b>FINAL SPECIFICATION / INVITATION:</b>	January 19, 2011
<b>CLOSE OF OPEN BID PERIOD:</b>	February 8, 2011 @ 1:00 p.m. CT; H-GAC clock
<b>PUBLIC RESPONSE OPENING (1):</b>	February 8, 2011 @ 2:00 p.m. CT; H-GAC clock
<b>AWARD RECOMMENDATION(S):</b>	March 15, 2011
<b>TARGETED CONTRACT START DATE &amp; TERM:</b>	April 1, 2011
The documents comprising this Invitation are available via (appropriate boxes checked)	
<input checked="" type="checkbox"/> - E-mail <span style="margin-left: 200px;"><input checked="" type="checkbox"/> - Web Download @ <a href="http://www.hgacbuy.org">www.hgacbuy.org</a></span>	
For questions regarding this Invitation, please contact:	
<b>Name: Lucy Pannell      Phone: 832.681.2559      E-mail: <a href="mailto:lucy.pannell@h-gac.com">lucy.pannell@h-gac.com</a></b>	

**CONTENTS OF THIS INVITATION**

- SECTION-A:** General Terms & Conditions (Final)
- SECTION-B:** Proposal-Specific Requirements (Final)
- SECTION-C:** H-GAC Forms (Final)
- SECTION-D:** Pro-Forma (Sample) Contract

(1) Proposal details will not be made public at the proposal opening. Only the names of respondents will be read aloud.

**NOTE: FAILURE TO SUBMIT BID RESPONSES ON OR PRIOR TO THE 1:00 CUTOFF TIME, OR WITHOUT THE REQUIRED SEALED BID FORMAT, OR WITHOUT THE REQUIRED FORM-A SIGNATURE WILL RESULT IN RESPONSE BEING DEEMED AS NON-COMPLIANT.**

**LABELING OF SEALED RESPONSE PACKAGE**

**IMPORTANT:**

You must affix an identifying label to the outside of your Sealed Response Package to ensure proper identification and log-in at HGACBuy offices on receipt. HGACBuy is not responsible for any response that might be lost or misdirected due to improper or unclear labeling. Your label should look as follows and should be affixed conspicuously to the package.

**H-GAC Cooperative Purchasing**  
**Sealed Proposal No. RE04-11**  
**DO NOT OPEN IN MAIL ROOM**

Responses by e-mail or fax will not be acceptable. Hard copies, as described herein, plus appropriate electronic media are required.

**NOTICE REGARDING NATIONWIDE SALES POTENTIAL**

HGACBuy is conducting this procurement with the objective of establishing one or more blanket type contracts for use by our Members. Because our Members are located not only in Texas, but throughout the country, we strongly urge you to participate in the process at the corporate level. If you do not sell direct, your dealer network may still service customers while you handle the administrative functions of providing quotes, accepting purchase orders, and collecting payments. If this is not feasible, we will work with you to subsequently assign your contract to your dealers as necessary to service customers.

Whatever approach you choose to take, there is considerable potential sales value because HGACBuy is being used not only in the State of Texas, but NATIONWIDE. This means that HGACBuy contractors will have a special advantage available to them in promoting sales to government agencies throughout the country - the ability to sell products without the need for the buyer to duplicate the competitive bidding process and expend the associated staff time and taxpayer dollars. We believe an HGACBuy contract would enhance your competitive position in the government marketplace, and are eager to work with you to promote the best interests of our participating local governments and qualifying non-profit organizations.

We look forward to your participation in our process. Please contact the HGACBuy staff member listed on the cover of this Invitation for additional information.

**TABLE OF CONTENTS**

1.	INTRODUCTION .....	2
2.	DEFINITIONS, ABBREVIATIONS & ACRONYMS .....	2
3.	NON-BINDING ORAL COMMENTS .....	4
4.	STRUCTURE OF RESPONSE .....	4
5.	BASIC REQUIREMENTS & CONDITIONS.....	4
6.	OFFEROR'S AUTHORIZED SIGNATORY .....	5
7.	SURETY FOR INSURANCE .....	5
8.	CONFIDENTIAL / PROPRIETARY MATERIALS .....	6
9.	REFERENCES .....	6
10.	INSURANCE .....	6
11.	OFFEROR CERTIFICATIONS.....	6
12.	HISTORICALLY UNDERUTILIZED BUSINESS (HUB) PARTICIPATION.....	7
13.	NON-RESIDENT RECIPROCAL SALES ACT .....	7
14.	TEXAS MOTOR VEHICLE COMMISSION CODE & LICENSING.....	8
15.	INTENT AND SCOPE OF SPECIFICATIONS .....	8
16.	REQUIREMENTS APPLICABLE TO PHYSICAL GOODS .....	8
17.	PRODUCT CODES .....	8
18.	SPECIFIC DESCRIPTIVE REFERENCES.....	9
19.	MANUALS .....	9
20.	STANDARD FEATURES & OPTIONS .....	9
21.	WARRANTIES, SALES & SERVICE .....	10
22.	H-GAC ORDER PROCESSING CHARGE .....	10
23.	PRE-PAYMENTS AND DISCOUNTS .....	10
24.	INSPECTION / TESTING .....	11
25.	PRODUCT DELIVERY .....	11
26.	OFFERED PRODUCT ITEM VARIANCES .....	11
27.	REQUIREMENTS FOR SUBMISSION OF A RESPONSE.....	11
28.	CLARIFICATION TO SPECIFICATIONS & REQUIREMENTS .....	13
29.	INCONSISTENT INFORMATION.....	13
30.	REJECTION OF RESPONSES.....	13
31.	WITHDRAWAL OR MODIFICATION OF RESPONSES .....	13
32.	RESPONSE EVALUATION .....	14
33.	ORDER OF PRECEDENCE PRIOR TO CONTRACT AWARD .....	14
34.	AWARD OF CONTRACT .....	14
35.	PRO-FORMA CONTRACT .....	14
36.	CONTRACT TERM .....	14
37.	PERFORMANCE & PAYMENT BOND .....	14
38.	CHANGE ORDERS.....	15

39.	DUPLICATION OF TERMS OR STATEMENTS.....	15
40.	PUBLICITY .....	15
41.	TAXES .....	15
42.	DRUG FREE WORKPLACE .....	15
43.	PRODUCT NOTICES & MAILINGS .....	15
44.	HANDLING OF ORDERS & PAYMENTS.....	15
45.	PRICE CHANGES.....	16
46.	CONTRACT ITEM CHANGES .....	17
47.	FORCE MAJEURE.....	17
48.	PERFORMANCE UNDER CONTRACT .....	17
49.	IMPLEMENTATION OF INTERNET BASED E-COMMERCE .....	18
50.	CONTRACTOR ORIENTATION/TRAINING.....	18
51.	LEGAL & CONTRACTUAL REMEDIES .....	18
52.	NATIONWIDE SALES OPPORTUNITIES.....	19

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## 1. INTRODUCTION

The Houston-Galveston Area Council (**H-GAC**) is a "Government-to-Government" procurement service for States, State Agencies, Local Governments, Districts, Authorities, and qualifying Not-for-Profit Corporations (**End Users**). End Users become **Members** of the **H-GAC** Cooperative Purchasing Program (**HGACBuy**) by executing an Interlocal Contract, which is free of cost and evergreen unless cancelled. **HGACBuy**, acting on behalf of **Members**, is soliciting competitive offerings for the furnishing of products and/or services, as described elsewhere, which MAY be purchased by **Members** during the contract term. **Members** using the Program issue purchase orders directly to **HGACBuy** contractors.

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## 2. DEFINITIONS, ABBREVIATIONS & ACRONYMS

The following definitions, abbreviations and acronyms may be found in these specifications, and shall be interpreted herein as specified below.

### Definitions and Abbreviations:

**Acceptance.** Acceptance takes place when the **End User** agrees with the **Contractor** that the terms and conditions of the contract have been met and verified. Acceptance is not the same as Receipt, and can only occur after intact shipping, inspection by **End User**, and any onsite testing that has been stipulated as part of the order

**Aggregate/Single Occurrence.** The term "*aggregate*" in insurance terms is the sum of all claims against a specific policy for a specific loss incident. The term "*single occurrence*" differentiates between multiple claims and single claims against a specific policy. The inherent value of a policy's aggregate value is less important to an **End User** than is the value of a single claim as stated under "*single occurrence*."

**Approved.** Acceptable to the "authority having jurisdiction."

**ARO.** "After Receipt of Order". Used in conjunction with a defined time period (usually days or weeks) to establish the delivery or lead time pursuant to any individual purchase transaction. In the case of orders for bodies which will be mounted on a customer furnished cab/chassis, the term ARO shall be construed to mean "After Receipt Of Cab/Chassis".

**Authority Having Jurisdiction.** The authority shall be either **H-GAC** or the relevant **End User** based on the requirements as stated in each specification item. Unless specifically stated, the authority shall be **H-GAC**.

**Bidder.** Any entity that submits a competitive bid to this Invitation. (See also "**Offeror**")

**Change Order.** Request by an **End User** for a change in the composition of an already submitted purchase order, for example to change quantity ordered, add or delete items, etc.

**Contract.** Specifically, a contract between **H-GAC** and a successful **Offeror** which is executed based on an award made pursuant this Invitation.

**Contract Pricing Worksheet.** The standard **H-GAC** form to be used by **Contractor** in preparing a quotation to an End User, upon which End User's purchase order will be based. **Contractor** may use another quotation form provided it contains required information, and only if approved by **H-GAC**.

**Contractor.** The contracted business entity responsible for fulfilling a contract executed pursuant to this Invitation.

**Dealer/Distributor.** A duly authorized and/or franchised business entity which sells and services a manufacturer's product in a specified marketing area.

**Defect.** A discontinuity in a part or a failure to function that interferes with the service or reliability for which the part was intended.

**Electronic Media.** As used herein, means computer based media such as 100mb Zip Disk, CDRom, e-mail, e-mail attachment, file downloaded from the web, etc.

**End User.** (See "**Participant**" and "**Member**")

**Listed.** Equipment or materials included in a list published by an organization, acceptable to the "Authority Having Jurisdiction" and concerned with product evaluation, that conducts periodic inspection of production of listed equipment or materials and whose listing states either that the equipment or materials meet appropriate standards or has been tested and found suitable for use in a specified manner. NOTE: The means for identifying listed equipment may vary for each organization concerned with product evaluation, some of which do not recognize equipment as listed unless it is also labeled. The "authority having jurisdiction" should utilize the system employed by the listing organization to identify a listed product.

**Manufacturer.** The person or persons, company firm, corporation, partnership, or other organization responsible for taking raw materials or components and making a finished product.

**May.** A term indicating a permissive use or an acceptable alternative to a specified requirement.

**Member.** An authorized Participant in the Program. (See "**Participant**" and "**End User**")

**Motor Vehicle.** The meaning of this term shall be based on the legal definition ascribed to it by the laws and/or regulations of the state in which any specific sale made pursuant to a Contract takes place.

**Must.** A term indicating a mandatory requirement.

**Offer or Offering.** Any product or service offered in reply to this Invitation.

**Offeror.** Any entity that submits a competitive bid or proposal in response to this Invitation. Bidder or Proposer.

**Participant.** Generally, any qualifying governmental or non-profit entity which has executed an Interlocal Contract for cooperative purchasing services with **H-GAC**.

**Product Liability Insurance.** Failure of Components and/or assembled equipment resulting in personal injury, disability or death and/or property damage is covered under the product liability insurance provisions.

**Product or Product Item.** Any of the specific goods, materials, equipment or service(s) specified in this Invitation. This term encompasses the base line item itself, and any and all accessories, options, modifications, ancillary services, assembly, testing, etc. that may be included in the delivered Product.

**Proposer.** Any entity that submits a competitive proposal in response to this Invitation. (See also "**Offeror**")

**Purchaser.** The **End User** having responsibility for the specification, requisition, ordering and acceptance of the Product or Service. (See also "**End User**")

**Purchasing Authority.** The agency that has sole responsibility and authority for negotiating, placing and, if necessary, modifying any solicitation, purchase order, or other award issued by a governing body [**H-GAC**].

**Quotation.** See "Contract Pricing Worksheet".

**Receipt.** Receipt takes place when a Product or Service is delivered to an **End User** and a document is executed that establishes that the Product is now in the possession of the **End User** or that the Service has been completed. Receipt DOES NOT connote or imply Acceptance.

**Response.** All or part of any offering submitted in response to this Invitation.

**Shall.** A term indicating a mandatory requirement or action.

**Should.** A term indicating a recommended or advised response to a specified requirement.

**Vendor.** A manufacturer's representative or dealer authorized to make sales and supply parts and service.

#### **Acronyms:**

**ANSI** = **A**merican **N**ational **S**tandards **I**nstitute

**ASTM** = **A**merican **S**ociety for **T**esting and **M**aterials

**ASME** = **A**merican **S**ociety of **M**echanical **E**ngineers

**CFR** = U.S. **C**ode of **F**ederal **R**egulations

**DOJ** = U.S. **D**epartment **O**f **J**ustice

**DOT** = U.S. **D**epartment **O**f **T**ransportation

**EPA** = U.S. **E**nvironmental **P**rotection **A**gency

**FAA** = **F**ederal **A**viation **A**dministration

**FMVSS** = U.S. **F**ederal **M**otor **V**ehicle **S**afety **S**tandards

**H-GAC** = **H**ouston-**G**alveston **A**rea **C**ouncil of Governments

**IEEE** = Institute of Electrical and Electronics Engineers  
**MVD** = Motor Vehicle Division of Texas Department of Transportation  
**NFPA** = National Fire Protection Association  
**NHTSA** = National Highway Traffic Safety Administration  
**NIOSH** = National Institute For Occupational Safety And Health  
**NIST** = National Institute of Standards and Technology  
**NTEA** = National Truck Equipment Association  
**OSHA** = U.S. Occupational Safety and Health Administration  
**RRC** = Railroad Commission of Texas  
**SAE** = Society of Automotive Engineers  
**TBPC** = Texas Building and Procurement Commission (formerly GSC)  
**TxDOT** = Texas Department Of Transportation  
**UL** = Underwriter's Laboratories Inc.  
**VTCS** = Vernon's Texas Civil Statutes

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### 3. NON-BINDING ORAL COMMENTS

No oral comment, utterance or response made by any employee, member, or agent of **H-GAC** or any Member of the Cooperative Purchasing Program shall be considered factual or binding with regard to this Invitation, or any contract awarded as a result of this Invitation. Valid and binding terms, conditions, provisions, changes or clarifications, or requests thereof, shall ONLY be communicated written form.

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### 4. STRUCTURE OF RESPONSE

Depending on the Product or Service, market structures and sales practices can differ substantially. For example, dealers may sell into any market or may be restricted to certain territories, manufacturers may sell direct or may be limited by law to selling thru independent dealerships, etc. **H-GAC's** objective is to ensure that **End Users**, no matter where located, can buy contracted products/services and receive quality and timely service and support, while at the same time allowing for the most appropriate and effective response to this Invitation. Therefore, responses to this Invitation will be accepted in conformance with the following scenarios and requirements:

#### **A. Single Respondent Acting Alone Or As "Lead" For A Group:**

**Offeror** shall complete and sign a **Form A** and, if contracted, shall be solely responsible for all contractual requirements including administration, processing of purchase orders and handling of payments for transactions which may involve other dealers who actually deliver the products or services.

#### **B. Multiple Respondents Acting Jointly:**

A single Response shall be submitted, and each party to the Response shall complete and sign a separate **Form A** to be included in the single Response. If the Response is successful each party shall sign a separate contract with **H-GAC** and shall be responsible for compliance with all terms and conditions. Only those which have executed a written contract with **H-GAC** may process purchase orders and payments.

**In any event, Offeror may be a party to one, and only one, response.**

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### 5. BASIC REQUIREMENTS & CONDITIONS

- a. The final requirements and specifications contained herein may be different, perhaps materially, from those in the "Invitation To Attend Pre-Bid / Pre-Proposal Conference", if any. It is **Offeror's** sole responsibility to thoroughly examine and review all documentation associated with this Invitation, including any Addendums, and to insure that any response submitted complies in every respect with all requirements.
- b. Any Addendum to this Invitation which may be required prior to the Response due date will be delivered to those prospective Offerors of record who have previously obtained a copy of this Invitation from **H-GAC**. Prospective Offerors shall be responsible for obtaining all documents relating to submission of a Response.
- c. **Offeror** shall thoroughly examine any drawings, specifications, schedules, instructions and any other documents, supplied as a part of this Invitation, and is solely responsible for understanding and compliance.
- d. **H-GAC** shall not be liable for **Offeror's** incomplete documentation, or for any costs associated with preparation and submission of any Response hereto. Additionally, all components of any Response become the property of **H-GAC**, and shall be considered to be in the public domain.

- e. **Offeror** shall make all investigations necessary to become thoroughly informed regarding any plan and/or infrastructure that may be required to support delivery of any Product or Service covered by this Invitation. No plea of ignorance by **Offeror** stemming from failure to investigate conditions that may now or hereafter exist, shall be accepted as a basis for varying **H-GAC's** requirements, or **Offeror's/Contractor's** obligations or entitlements.
- f. Requests for changes to the requirements or specifications herein must be in writing (e-mail, fax, letter) and must be received by **H-GAC** no later than fifteen (15) calendar days prior to the Response Due Date. **H-GAC** will review such requests, but may or may not make changes at its sole discretion. Changes, if any, will only be made by written Addendum sent to addressees of record. In any event, it is **Offeror's** sole responsibility to insure that any and all Addendums which may have been issued have been received and addressed.
- g. By submission of a response, **Offeror** expressly understands and agrees that all terms and conditions herein will be part of any subsequent contract that is executed pursuant to this Invitation.
- h. **Offeror** is advised that all **H-GAC** contracts are subject to the legal requirements established in any applicable Local, State or Federal statute.
- i. **Offeror/Contractor** must be in compliance with all licensing, permitting, registration and other applicable legal or regulatory requirements imposed by any governmental authority having jurisdiction. It is **Offeror/Contractor's** responsibility to insure that this requirement is met, and to supply to **H-GAC** upon request, copies of any license, permit or other documentation bearing on such compliance.
- j. Unless otherwise established elsewhere in this Invitation, NO minimum purchase quantities or spending levels are provided or guaranteed by **H-GAC** or any **End User**.
- k. This Invitation is not meant to restrict competition, but rather is intended to allow for a wide range of responses.
- l. Responses which are 'qualified' with conditional clauses or alterations of or exceptions to any of the terms and conditions in this Invitation may be deemed non-compliant at **H-GAC's** sole discretion.
- m. The term '**Offeror**', or derivative thereof, shall become synonymous with '**Contractor**' for any successful **Offeror** recommended for a contract pursuant to this Invitation.
- n. **H-GAC** reserves the right to:
  - Reject any and all offers received in response to this Invitation.
  - Reject any part of an offer received in response to this Invitation.
  - Determine the correct price and/or terminology in the event of any discrepancies in any response.
  - Accept a response from, and enter into agreement with, other than the lowest price **Offeror**.
  - Accept responses and award contracts to as many or as few **Offerors** as **H-GAC** may select.
  - Amend, waive, modify, or withdraw (in part or in whole) this Invitation, or any requirements herein.
  - Hold discussions with **Offerors**, although award may be made without discussion.
  - Request an **Offeror** to give a presentation of the Response at a time and place scheduled by **H-GAC**.
  - Exercise any of these rights at any time without liability to any **Offeror**.
- o. **H-GAC** reserves the right to determine that conditions exist which prevent the public opening of responses on the date and at the time advertised, and to reschedule the public opening for a future date and time. Responses received by **H-GAC** by the original deadline will be secured unopened until the rescheduled opening date and time, and those having timely submitted such responses will be notified.

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## 6. OFFEROR'S AUTHORIZED SIGNATORY

The signatory shall be authorized to sign and contractually bind **Offeror**, and shall sign any and all Response documentation requiring a signature.

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## 7. SURETY FOR INSURANCE

**Contractor** shall be responsible for using a surety company properly licensed by any and all states in which Contractor will do business with Participants. The surety company shall not expose itself to any loss on any one risk in an amount exceeding ten percent (10%) of its surplus to policy holders, provided any risk or portion of any risk shall have been reinsured, and such reinsurance shall be deducted in determining the limitation of risk applicable to **H-GAC's** insurance requirements.

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## 8. CONFIDENTIAL / PROPRIETARY MATERIALS

All documentation submitted as part of **Offeror's** response to this Invitation will be considered to be in the public domain and may be made available to Members and others, after contract award, upon properly submitted request. If **Offeror** submits documents marked "confidential" or "proprietary", the Response may be deemed non-compliant.

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## 9. REFERENCES

- a. **Offeror** shall list the names of at least five government agencies within the continental United States which have purchased from **Offeror** products or services similar to those covered by this Invitation, within the last two years. **H-GAC** reserves the right to determine if such products or services are appropriately similar.
- b. **Offeror** may provide reference information in whatever format desired, but each should include the following specific information:
  - Agency name
  - Contact person name
  - Address
  - Phone & Fax numbers
  - Description of product(s) or service(s) and date sold
- c. Other information, including criticism however learned, may be used by **H-GAC** in evaluation of responses.

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## 10. INSURANCE

- a. Unless otherwise stipulated in Section B, **Offeror/Contractor** must have the following insurance and coverage minimums:

**General liability** insurance with a Single Occurrence limit of at least \$1,000,000.00, and a General Aggregate limit of at least two times the Single Occurrence limit.

**Product liability** insurance with a Single Occurrence limit of at least \$1,000,000.00, and a General Aggregate limit of at least two times the Single Occurrence limit for all Products except Automotive Fire Apparatus. For Automotive Fire Apparatus, see Section B – Product Specific of this Invitation.

**Property Damage or Destruction** insurance is required for coverage of **End User** owned equipment while in **Contractor's** possession, custody or control. The minimum Single Occurrence limit is \$500,000.00 and the General Aggregate limit must be at least two times the Single Occurrence limit. This insurance may be carried in several ways, e.g. under an Inland Marine policy, as part of Automobile coverage, or under a Garage Keepers policy. In any event, this coverage must be specifically and clearly listed on insurance certificate(s) submitted to **H-GAC**.
- b. Insurance coverage shall be in effect for the length of any contract made pursuant to this Invitation, and for any extensions thereof, plus the number of days/months required to *deliver* any outstanding order after the close of the contract period.
- c. Original Insurance Certificates must be furnished to **H-GAC** on request, showing **Offeror/Contractor** as the insured and showing coverage and limits for the insurances listed above.
- d. If any Product(s) or Service(s) will be provided by parties other than **Offeror/Contractor**, all such parties are required to carry the minimum insurance coverages specified herein, and if requested by **H-GAC**, a separate insurance certificate must be submitted for each such party.
- e. **H-GAC** reserves the right to contact insurance underwriters to confirm policy and certificate issuance and document accuracy.

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## 11. OFFEROR CERTIFICATIONS

**Offeror, by submission of a Response hereto, makes the following certifications under penalty of perjury and possible contract termination if any of these certifications are found to be false.**

### Non-Collusive Response

- a. The prices in the Response have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other **Offeror** or potential competitor.

- b. The prices which have been quoted in the Response (unless otherwise required by law), have not been knowingly disclosed by **Offeror** and will not be knowingly disclosed by **Offeror** prior to the public response opening, either directly or indirectly, to any other **Offeror** or competitor.
- c. No attempt has been made or will be made by **Offeror** to induce any other person, partnership or corporation to submit or not to submit a response for the purpose of restricting competition.

**Non-Biased Specifications**

This Invitation contains no requirements considered to be unduly biased in favor of **Offeror** or any other **Offerors** that may be competing for this procurement.

**No Financial Interest or Other Conflict**

- a. No **H-GAC** officer, employee, Board of Directors member or member of any **H-GAC** board or commission, nor family member of any such person, has a financial interest, direct or indirect, in **Offeror** or in any contract **Offeror** might enter into with **H-GAC**.
- b. No economic or employment opportunity, gift, loan, gratuity, special discount, trip, favor or service has been, or will be, offered or given to any officer, employee, Board of Directors member, or member of any **H-GAC** board or commission, nor to any family member of any such person.

**Debarment and Suspension Status**

- a. **Offeror** is not currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any government agency, nor is **Offeror** an agent of any person or entity that is currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transaction by any government agency.
- b. **Offeror** has not within a three year period preceding this Invitation been convicted of or had a civil suit judgement rendered against **Offeror** for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property.
- c. **Offeror** is not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated above.
- d. Offeror has not, within a three year period preceding this Invitation, had any government (federal, state, or local) transactions terminated for cause or default.

**Insurance Coverages**

**Offeror** has and will maintain insurance coverage in accordance with the requirements of this Invitation.

**Licensing & Permits**

**Offeror(s)** has (have) all licenses and/or permits, required by any and all governmental entities having jurisdiction, to legally sell the products/services offered.

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**12. HISTORICALLY UNDERUTILIZED BUSINESS (HUB) PARTICIPATION**

- a. To satisfy Texas' statutory requirements [Government Code, Chapter 2161, Subchapter D], **H-GAC** requires all **Offerors** to supply information in any bid/proposal response listing (1) the total number of subcontracts and (2) the total number of HUB contracts applicable to the Products or Services offered in the response. Local governments often require this information for their own reporting requirements prior to placing orders through the **H-GAC** Cooperative Purchasing Program.
- b. **Offeror** must complete **Form B** and include subcontracts with HUB's that provide any materials or services related to sales that may be made thru **H-GAC's** Cooperative Purchasing Program.

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**13. NON-RESIDENT RECIPROCAL SALES ACT**

As required by Texas Civil Statutes in the award of contracts, an offeror which is not a Texas resident business must determine if its state of residence prohibits award of government contracts to Texas resident offerors without penalty. If **Offeror's** resident state DOES penalize Texas offerors, **Offeror** must provide this information along with a copy of its applicable resident state's statute in the Response.

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#### 14. TEXAS MOTOR VEHICLE COMMISSION CODE & LICENSING

Sales of motor vehicles in the State of Texas are subject to the Texas Motor Vehicle Commission Code. If this Invitation includes any motor vehicle to be sold in the State of Texas, **Offeror** certifies by submission of a response hereto that all required Texas Motor Vehicle Commission licenses are in place and current, and that copies of all such licenses **have been submitted with the Response**. Further, it shall be **Contractor's** responsibility to keep current all required Texas Motor Vehicle Commission licensing during the term of the contract, and to furnish license copies at any time on request by **H-GAC**. If **Contractor** does not maintain current licensing, **H-GAC** reserves the right to immediately terminate the contract.

<p><b>NOTE:</b> In accordance with the Texas Motor Vehicle Commission Code, contracts for motor vehicles to be sold within the state of Texas may be made <b>ONLY</b> with properly licensed Texas Motor Vehicle Dealers. Therefore, to be considered for a contract covering Texas End Users, the Response must include a <b>Form A</b> from a licensed Texas Motor Vehicle Dealer</p>
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#### 15. INTENT AND SCOPE OF SPECIFICATIONS

- a. The intent of the specifications herein is to provide **Offeror** with sufficient information concerning the Products/Services to be contracted such that **Offeror** can prepare and submit an acceptable Response.
- b. The specifications may be detailed or general in nature with regard to any particular Product/Service. Where not otherwise specified, details of construction, materials, or the way in which services will be provided, are left to the discretion of the **Offeror**, provided only that any offering shall conform, as a minimum, to best Industry standards and practices and to what is currently being sold in the marketplace.
- c. Responses shall be considered only from **Offerors** that have established good reputations in their markets, and who furnish satisfactory evidence of ability to supply the Products/Services specified herein.
- d. **Offeror** shall show proof of ability to provide to **End Users** prompt and competent service, including parts if applicable, for all Products/Services covered by this Invitation, by proper completion of a Service Organization Document as described elsewhere herein.

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#### 16. REQUIREMENTS APPLICABLE TO PHYSICAL GOODS

In the case of physical goods (e.g. equipment, material, supplies, as opposed to services), all Products offered must, unless otherwise stipulated in Section B:

- a. Be new, unused, and not refurbished.
- b. Not be a prototype insofar as the general design, operation and performance. This requirement is NOT meant to preclude **Offeror** from offering new models or configurations which incorporate improvements in a current design or add functionality, but which in such new model or configuration may be new to the marketplace.
- c. Include any and all accessories which may or may not be specifically mentioned herein, but which are normally furnished or which are necessary to make a delivered Product ready for its intended use. Such accessories shall be assembled, installed and adjusted such that the Product is ready for continuous operation at time of delivery.
- d. Have assemblies, sub-assemblies and component parts that are standard and interchangeable throughout the entire quantity of a particular Product as may be purchased simultaneously by any individual **End User**.
  - a. Be designed and constructed using current industry accepted engineering and safety practices, and materials.
  - b. Be available for inspection at any time prior to or after procurement.

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#### 17. PRODUCT CODES

Unless otherwise addressed in Section B of this Invitation, the following requirements shall apply:

- a. Each Product/Service offered shall be uniquely identified using an **H-GAC** Product Code, which shall be determined as described in Section B of this Invitation. **Offeror** shall offer **ONLY ONE** Product for any particular Product Code. For example, **Offeror** may wish to submit a bid for Product Code ABC and may have another offering that also meets the requirements for ABC. **Offeror** **MAY NOT** submit two offerings for ABC. The alternate offering that also meets the requirements for ABC must be offered as an option "upgrade/downgrade" to ABC on **Form E**.
- b. Pricing for optional upgrades or downgrades to base bid items should be quoted as an "adder" or "deduct" amount as appropriate, to be applied to the offered price of the base Product Item listed on **Form D**.
- c. Base bid items and their associated HGACBuy Product Codes are included in the Section B and/or on **Form D**.

- d. Selection of Product Codes for which to submit an offer is at **Offeror's** sole discretion.

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## 18. SPECIFIC DESCRIPTIVE REFERENCES

Except for Base Product Items listed on **Form D**, any reference to a specific catalog, data sheet, form, brochure, model name or number, etc. used herein to describe an item such as an option or accessory is only descriptive and is not to be considered restrictive unless otherwise noted. Such references are normally used only to indicate a type, general description, level of quality and/or required performance standards.

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## 19. MANUALS

Unless otherwise specified or superceded herein, each Product delivered under an **H-GAC** contract, and if applicable any options thereto, shall be supplied with at least one (1) copy of a safety and operating manual. The cost of any such manuals must be included in the base price for any Product Item offered hereunder. If more detailed and technically orientated parts and maintenance manuals are available for a Product or option, at a cost, they shall be offered as options on the *FORM* designated herein for such options, or elsewhere in the Response as may be directed herein.

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## 20. STANDARD FEATURES & OPTIONS

The following requirements are applicable primarily to physical goods.

### Standard Features

- a. The stated minimum requirements for all Products listed herein include what **H-GAC** considers to be "standard" features. Even though such features might normally be offered as options rather than as standard, they are nonetheless considered to be standard in this Invitation, and must be included in the base price for any Product offered. Such features **SHOULD NOT** be offered as options except as deducts for their omission from the base Product.
- b. If it is unclear in the Response that an **H-GAC** standard feature is included in the base price, it will be assumed that such is the case. If awarded a contract **Offeror** will be expected to sell the Product with all **H-GAC** specified standard features included in the base price.
- c. Any feature or accessory normally offered by manufacturer as "standard" shall be considered a standard feature and shall be included in the base price of any offering, even though not specifically listed as a requirement in **H-GAC's** specifications. Such features **SHOULD NOT** be offered as options except as deducts for their omission from the base Product.

### Options - General

- a. Options are considered to be any features or accessories, other than **H-GAC's** and Manufacturer's "standard" features or accessories.
- b. Options should be offered on the *FORMS* designated for quoting options. Each option should be listed and described on a separate line, and should include any Manufacturer's/Dealer's code number. If no Manufacturer's/Dealer's code number exists, **Offeror** should create one.
- c. Prices for all offered options shall be assumed to include any installation or mounting required to make it a fully functional component of the Product, unless otherwise stated in **Offeror's** response.

### Required Options

- a. Product specifications in this Invitation may include **H-GAC** "Required Options". If so, **Offeror** must quote a price for ALL such options, and, if there is an **H-GAC** Option Code provided in this Invitation for such options, it MUST be used as part of the description.
- b. For any specific "Required Option", **Offeror** may quote an equivalent so long as its design and performance are as good as, or better than, the specified option item. Responses which do not include pricing for Required Options may be considered non-compliant.

### Other Options

- a. "Suggested" or "Other" options may be listed for any particular Product in this Invitation, and **Offeror** is encouraged to quote pricing for such options. The extent of offered options in any response may be taken into consideration as part of the award criteria, at **H-GAC's** sole discretion.

- b. **Offeror** is encouraged to include options for non-equipment items that may be applicable to a sale, such as: Extended Warranties, Maintenance Agreements, Buy-back or Trade-In Agreements, Out-of-state Delivery Charges, Quantity or Special Discounts, Extended Training Classes, etc.

### **Published & Unpublished Options**

- a. H-GAC Cooperative Purchasing Program (Program) contracts are awarded through a public competitive bid or proposal (RFP) process. Further to that process, Program policy considers an 'option' listed and priced in a bid or RFP Response: (1) To be a "**Published Option**"; (2) To be part of any awarded contract; and (3) To be available for purchase by Program members separately and independently from associated base line items. However, since Published Options may have not been subjected to the same scrutiny as the associated base line items, it cannot be concluded they were directly competed. Therefore, pursuant to Local Government Code 252.021(a), purchase of a published option costing more than \$50,000 shall not be allowed. Furthermore, **H-GAC** reserves the right at its sole discretion to disallow purchase of any Published Option through the Program if deemed contrary to the intent of the law.
- b. Any option that has not been listed and priced in the Response is considered to be an "**Unpublished Option**". Unpublished Options may be sold, but only in connection with the sale of a base Product Item, and only insofar as the total cost of all Unpublished Options remains below twenty five percent (25%) of the total summed cost of the base Product(s) plus any Published Options.
- c. No Published or Unpublished Option may be sold which essentially converts a Product such that it competes with a Product Item awarded to another contractor.

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## **21. WARRANTIES, SALES & SERVICE**

Unless otherwise addressed in Section B, the following requirements shall apply:

- a. Offeror must be a properly franchised dealer authorized to sell and service, including warranty service, all products offered and sold in response to the bid invitation or under any **H-GAC** contract.
- b. **Offeror** shall provide detailed Parts and Labor Warranty information with the Response. If **Offeror** submits a warranty with the Response which does not meet the minimum requirements herein, **Offeror** agrees by submission of a Response that such warranty shall be considered to be amended to meet those minimums.
- c. Warranties shall be manufacturer's standard and shall be inclusive of any other warranty requirements which may be stipulated elsewhere herein.
- d. Any warranties offered by a dealer shall be in addition to the manufacturer's standard warranty, and shall not be a substitute for such. **Offeror's** base price for any Product shall be inclusive of the standard warranty.
- e. Complete warranty information will be supplied to **End User** with each Product sold.
- a. Warranties need not apply to normal maintenance service or adjustments, or to any product reasonably shown to have been repaired or altered in any way so as to affect its stability, or to any product which has been subject to misuse, negligence, or accident.
- f. **Offeror/Contractor** is encouraged to offer extended warranties as an option.
- g. Neither **H-GAC** nor **End User** assume any warranty or liability on **Contractor's** behalf unless made or assumed in writing, initiated by **Contractor**, and agreed to in writing by **H-GAC** or the **End User** respectively.
- h. **Contractor** shall be responsible for the execution and effectiveness of all product warranty, and shall be the sole source for solution to problems arising from warranty claims. **Contractor** agrees to respond directly to correct warranty claims and to ensure reconciliation of warranty claims that have been assigned to a third party.

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## **22. H-GAC ORDER PROCESSING CHARGE**

**H-GAC** will levy an Order Processing Charge on **Contractor** for each sale done thru the **H-GAC** contract, with the exception of orders for motor vehicles. Any bid pricing submitted will be considered to include the Charge. The amount of the applicable charge shall be per the most current **H-GAC** schedule. For motor vehicle orders, the Processing Charge shall be levied on and paid by the **End User**.

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## **23. PRE-PAYMENTS AND DISCOUNTS**

- a. Progress, pre-payment and special discounts of any kind may be offered and detailed in the Response. Such discounts shall be clearly explained, but shall not be a determining factor in awarding contracts except in the case of tie offerings.
- b. Quantity discounts applicable to similar Products sold to one or more **End User** Departments may be offered. Determination as to product similarity shall rest solely with **Contractor**.
- c. For specific purchases, any proposed quantity, pre-payment or special discounts shall be clearly shown on the Contract Pricing Worksheet.

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## 24. INSPECTION / TESTING

All Products sold pursuant to this Invitation shall be subject to inspection/testing by or at the direction of **H-GAC** and/or the ordering **End User**, either at the delivery destination or the place of manufacture. In the event a Product fails to meet or exceed all requirements of this Invitation, and unless otherwise agreed in advance, the cost of any inspection and/or testing, shall be borne by the **Contractor**.

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## 25. PRODUCT DELIVERY

Unless otherwise addressed in Section B, the following requirements shall apply:

- a. Title to goods, and responsibility and liability for loss and/or damage in shipping pass to **End User** at the delivery destination after receipt and acceptance have taken place. Cost of shipping/delivery shall be paid by **End User** unless otherwise agreed to by **Contractor**. If **Contractor** will be paying for shipping/delivery, shipping terms must be "F.O.B. Destination, Freight Prepaid". If **End User** will be paying for shipping/delivery, shipping terms must be "F.O.B. Destination – Freight Collect".
- b. The details for the application and calculation of shipping and delivery charges must be stated in the Response on **Form E**. Any freight, shipping or delivery charged to **End User** will be prepaid and added to the invoice, and will be clearly shown on any Contract Pricing Worksheet or other quote presented to the **End User**.
- c. The estimated delivery time after receipt of order (ARO), inclusive of Saturdays, Sundays and holidays, for all Products offered must be stated in the Response. Actual delivery for any particular order must be confirmed with **End User** at time of order placement, and must be stated clearly on the Contract Pricing Worksheet.
- d. **Contractor** shall be responsible for delivery and Acceptance according to the requirements of the Contract and the Purchase Order.
- e. Contractor shall advise **End User** prior to making any shipment/delivery, and shall make such shipment/delivery in accordance with **End User's** requirements, providing only that such arrangements do not contravene any requirement of the **H-GAC** contract unless agreed to by **Contractor**.
- f. The execution of all required tests, certifications and/or licensing, and costs thereof, shall be the responsibility of **Contractor**. Upon request by **End User** or **H-GAC**, **Contractor** shall provide any documentation or certification related to such tests, certifications or licensing.

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## 26. OFFERED PRODUCT ITEM VARIANCES

Any variance in the specifications or performance of Products offered pursuant to this Invitation shall be acceptable to **H-GAC** only insofar as it MEETS or EXCEEDS the specifications and requirements of this Invitation.

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## 27. REQUIREMENTS FOR SUBMISSION OF A RESPONSE

Unless otherwise addressed in Section B, the following requirements shall apply:

- a. Responses shall be submitted in two complete printed sets including an Original and one (1) Copy in separate "hard side" three-ring binders. The outer spine of each binder shall be labeled showing this Invitation No., **Offeror** Name, and either "Original" or "Copy", as applicable. The Original printed response will be considered to be the binding Response in case of any conflicts between printed copies and electronic copies. Except for required forms, **H-GAC** Invitation documents should not be included in the Response.
- b. The Original and the Copy shall be submitted complete, except that the Electronic Media should be submitted only with the Copy.
- c. All required **H-GAC FORMS** and documents shall be properly completed, without exception or **Offeror's** Response may be deemed non-compliant. **Offeror** may not modify the format of any **H-GAC FORM** in any way. **Offeror** may photocopy or print blank **FORMS** as needed. Information submitted on the printed copies of the **FORMS** may not be handwritten except for signatures and initials. It is **Offeror's** responsibility to insure that printed **FORMS** are clear and legible. Handwritten and illegible entries may be rejected. **Offeror's** printed, stamped or typed name shall appear on every **FORM** submitted in the Response.
- d. The entire response submission shall also be submitted on electronic media, including all required **H-GAC FORMS**. **Offeror** is strongly advised to make and work with copies of the original electronic **FORMS**. The originals can then be used to make additional electronic or printed copies of the blank **FORMS**. Signatures are not required on the electronic **FORMS**.
- e. The Response shall include ample written evidence, in the form of technical specifications, cut/tear sheets, brochures, pictures, drawings, etc., to demonstrate that all specifications herein have been met and/or exceeded.

- f. The Response shall include, in any format desired, an overview of the **Service Organization** which will support Products sold under any **H-GAC** contract. The overview must include facility locations, phone numbers and Service Manager names, as well as the following:
- The procedure to be used by an **End User** requiring repairs.
  - Typical turn-around time on repairs.
  - Service Department days and hours of operation.
  - Number of qualified / factory trained service personnel normally on hand.
  - Description of the parts inventory on hand.
  - Training services, facilities and personnel available.
- g. Responses shall be enclosed in a sealed package(s) addressed to the Houston-Galveston Area Council, Cooperative Purchasing. The following information shall be stated on the exterior of the package(s):
- Name and address of **Offeror**.
  - Date and hour of public response opening.
  - Bid/Proposal Invitation number.
  - The statement: "**SEALED BID/PROPOSAL, DO NOT OPEN IN MAIL ROOM**".
- H-GAC** shall not be responsible for any Response not properly labeled.
- h. Submission of a COMPLETE Response by telegraphic or electronic transmission is not acceptable. However, Responses may be modified by telegraphic or electronic notice if such notice is received prior to the deadline for submission.
- i. Samples, when required, shall be submitted within the time specified and at no expense to **H-GAC**. If not destroyed or consumed during testing, samples will be returned upon request at **Offeror's** expense.
- j. **Offeror** shall provide firm contract pricing for all Products and Options being offered.
- k. If applicable, responses shall include copies of all current licensing which may be required by the Texas Motor Vehicle Division for execution of sales pursuant to any contract with **H-GAC**.
- l. Due to the complexity of responses and to aid in evaluation, the Response should contain **ALL** required information in tabbed sections as detailed below. Omission of any required FORM or information will be sufficient grounds for H-GAC to consider your response to be non-compliant. **NOTE** – Items in the Fourth Section should be supplied **ONLY** in the Original.

**First Section:**

- **Form(s) A – Offeror Identification & Signatory:** Identifies the offering party(ies), and should be completed by each party to the Response. If awarded, a contract will be executed with each.
- **Form B – Historically Underutilized Business Enterprises:** Used to collect information about disadvantaged and minority suppliers and subcontractors, and to commit **Offeror** to working with Participants toward their program goals.
- **Form C – Response Checklist:** Certification, and also an aid, to insure that all required information has been included in your Response.
- References, formatted as described elsewhere herein.
- Service Organization Document, formatted as described elsewhere herein.

**Second Section:**

- **Form D – Offered Items Pricing:** For Bids, contains the list of the Product Items covered by this Invitation. Select the items offered and fill in the price for each. (For RFPs, follow the instructions in Section B as this **Form** may or may not be used.)
- **Form E – Published Options:** Used to list and price all offered options. List, each on a separate line, all upgrades, downgrades, optional equipment, features, accessories and services which you desire to sell thru the **H-GAC** contract, if awarded. Published catalogs/price sheets may be listed, along with the discount structure that will apply. (For RFPs, follow the instructions in Section B as this **Form** may or may not be used.)

**Third Section:**

- Technical Specifications, Product Brochures, Tear Sheets, Cut Sheets, Strippers, etc. which clearly list and show all the standard features and capabilities of each Product Item offered on Form D.
- Warranty Documentation, as described elsewhere herein, for all items offered.

#### **Fourth Section:**

- Copies of any applicable Texas MVD Licenses.
  - Electronic Media, containing the complete response including all required *FORMS*, stored in a pouch or an envelope such that it will not fall out of the binder. (Required in 'Copy' only, not in 'Original'.)
  - **Form CIQ – Conflict Of Interest Questionnaire:** Chapter 176 of the Texas Local Government Code requires vendors and consultants contracting or seeking to contract with **H-GAC** to file a Conflict of Interest Questionnaire (CIQ) if they have an employment or other business relationship with an **H-GAC** officer or an officer's close family member. The required questionnaire is located at the Texas Ethics Commission website: [http://www.ethics.state.tx.us/whatsnew/conflict\\_forms.htm](http://www.ethics.state.tx.us/whatsnew/conflict_forms.htm). It is Bidder's responsibility to download the form and furnish a completed copy with the Response, if it is applicable.
- m. By submittal of Response, **Offeror** certifies to the best of its knowledge that all information is true and correct.

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#### **28. CLARIFICATION TO SPECIFICATIONS & REQUIREMENTS**

- a. If **Offeror** is in doubt as to the meaning of any item in this Invitation, a written request for clarification may be submitted to **H-GAC** up to fifteen (15) calendar days prior to the deadline for response submission. **H-GAC** shall not be responsible for late delivery. Requests may be transmitted by FAX or e-mail to the assigned Specification Specialist, and should clearly reference this Invitation number and the specific page and paragraph in question. If there are multiple questions, they should be stated separately and numbered.
- b. Any interpretation of Invitation documents, if made, will be by written Addendum duly issued. A copy of such Addendum will be mailed or delivered to each person officially on record as having been sent a copy of this Invitation. **H-GAC** will not be responsible for any other explanation or interpretation of the Invitation documents made or given prior to the award of the contract.
- c. Any objections to the Invitation documents must be filed in writing with **H-GAC** on or before fifteen (15) calendar days prior to the deadline for submission of responses.
- d. Prospective offerors are advised that, after a draft specification has been issued, the Pre-Bid/Proposal Conference is the primary forum through which comments and suggestions may be offered for consideration by **H-GAC** prior to issuance of the final invitation and specifications.
- e. All best efforts have been made to insure that the product/service descriptions and associated specification information in Sections B & C are correct, and adequate time has been given to prospective Offerors to point out mistakes. However, if an error remains and is caught by Offeror before the scheduled bid/proposal opening, Offeror shall make note of the required correction in the Response, and shall also notify **H-GAC** prior to the opening of responses.

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#### **29. INCONSISTENT INFORMATION**

**H-GAC** review of responses supplied on **H-GAC FORMS** is a significant part of the evaluation process. **Offeror** shall state clearly all information required on the *FORMS*. **Offeror's** information supplied on the *FORMS* shall take precedence in the event any standard "boilerplate" type language included in **Offeror's** response is inconsistent with the information supplied by **Offeror** on the **H-GAC FORMS**. In all cases, information on **H-GAC's** printed *FORMS* supplied as part of **Offeror's** response shall take precedence over information supplied on electronic media.

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#### **30. REJECTION OF RESPONSES**

- a. **H-GAC** may reject a response if:
- **Offeror** misstates or conceals any material fact in the Response, or if,
  - **Offeror** does not strictly conform to law or the requirements of this Invitation.
- b. **H-GAC** may reject any and all responses, and may reject any part of a response.
- c. **H-GAC**, **at its sole discretion**, may also waive any formalities or irregularities in any response, or ask for corrected information except for pricing.

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#### **31. WITHDRAWAL OR MODIFICATION OF RESPONSES**

Once received by **H-GAC**, responses may be modified or withdrawn prior to the submission deadline only if the request to do so is in writing submitted by **Offeror's** authorized representative. Responses and requests for modification received after the submission deadline will not be accepted. Requests for response withdrawal

received after the submission deadline will be accepted if the request to do so is in writing submitted by **Offeror's** authorized representative.

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### 32. RESPONSE EVALUATION

#### For Bid Responses:

- a. Section B will state whether the contract will be awarded to the lowest responsible bidder or to the bidder who provides goods or services at the best value for **H-GAC** and its participants.
- b. If the contract will be awarded based on best value, Section B will state any relevant criteria which **H-GAC** will consider.
- c. For each offered Product Item, **H-GAC** may use the offered price, prices for Required Options, and the prices of selected common Published Options to determine the lowest responsible offer.
- d. Failure of **Offeror** to submit pricing for frequently purchased options and any **H-GAC** required options may cause response to be considered non-compliant at **H-GAC's** sole discretion.

#### For Proposal Responses:

- e. **H-GAC** will evaluate proposals as detailed in Section B.
- f. By submission of a Response Offeror indicates acceptance of the evaluation technique, and recognizes and accepts that **H-GAC** may at its sole discretion make subjective judgments during the evaluation process.

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### 33. ORDER OF PRECEDENCE PRIOR TO CONTRACT AWARD

In the event of conflict between this document and any references or documents cited herein, this document shall take precedence prior to contract award.

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### 34. AWARD OF CONTRACT

- a. **H-GAC** reserves the right to accept or reject any Product Item or option offered. Additionally, all options included in Offeror's response and accepted by **H-GAC** are understood to be included in any contract.
- b. **H-GAC** shall award contract(s) for line items or groups of line items, at its sole discretion.
- c. With authority granted by the **H-GAC** Board of Directors, a written contract shall be presented to the successful **Offeror(s)** and shall be subject to acceptance by the successful **Offeror(s)** within thirty (30) calendar days after presentation by **H-GAC**. If a contract is not executed within thirty (30) calendar days, **H-GAC** may rescind the contract offer and award a contract to the next **Offeror** in order of rank as determined by **H-GAC**.
- d. Delivery time and prompt payment discounts, including time allowed for payment, may be considered in tie-breaking of offers which are judged by **H-GAC** to be equal in all other criteria.
- e. The contract shall include the following documents in the stated order of precedence:
  - 1st The contract document signed by **H-GAC** and **Offeror**.
  - 2nd This Invitation and all specifications referenced herein.
  - 3rd **Offeror's** response to this Invitation.

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### 35. PRO-FORMA CONTRACT

This Invitation includes a Pro-Forma (sample) Contract which successful offerors will be expected to sign. The actual final contract will be the same or nearly the same as the Pro-Forma. NOTE: Successful Offerors MAY NOT process any purchase orders until the contract documents have been executed and returned to **H-GAC**.

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### 36. CONTRACT TERM

The contract shall be in effect throughout the period stated elsewhere in the contract documents, and thereafter until such time as any outstanding orders against the contract have been fulfilled. The contract may be extended if deemed by **H-GAC** to be in the best interests of the Program, and subject to mutual agreement of the parties.

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### 37. PERFORMANCE & PAYMENT BOND

**H-GAC's** contractual requirements DO NOT include a Performance & Payment Bond (PPB), and offered pricing should reflect this cost saving. However, **Contractor** must be prepared to offer a PPB to cover any specific order if so requested by **End User**. **Contractor** shall quote a price to **End User** for provision of any requested PPB, and agrees to furnish the PPB within ten business (10) days of receipt of **End User's** purchase order.

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### 38. CHANGE ORDERS

**End Users** shall have the right to make additions by addenda for the purpose of clarification or inclusion of additional specifications, qualifications, conditions, etc. Any such addenda shall be made in writing and agreed upon by **Contractor** and the **End User** agency prior to issuance of any Change Order. A copy of any such Change Order shall be furnished by **Contractor** to **H-GAC**.

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### 39. DUPLICATION OF TERMS OR STATEMENTS

Where statements or terms are duplicated or are extremely similar, **H-GAC** and the **End User** reserve the right to use the statement or term most favorable to **H-GAC** and/or the **End User**.

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### 40. PUBLICITY

**H-GAC** encourages contractors to "market" the Program, and can provide some information and artwork to be used in published promotional materials. However, any publicity or published material released by **Contractor** referencing the contract, whether in the form of a press release, brochure, photographic coverage, or verbal announcement, shall be issued only with prior review and approval by **H-GAC**.

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### 41. TAXES

**HGAC** and **End User** participants are either units of government or qualified non-profit agencies, and are generally exempt from Federal and State sales, excise or use taxes. **Offeror** shall not include any such taxes in the Response. Further, it shall be the responsibility of **Contractor** to determine the applicability of any taxes to a particular order and act accordingly. Exemption certificates will be provided upon request.

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### 42. DRUG FREE WORKPLACE

**Contractor** shall provide notice to its employees and sub-contractors, as required under the Drug-Free Workplace Act of 1988. A copy of **Contractor's** Drug-Free Workplace policy shall, on request, be furnished to any **End User**.

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### 43. PRODUCT NOTICES & MAILINGS

**H-GAC** is **NOT** the owner of Products sold pursuant to this Invitation, but acts only in the capacity of purchasing agent. In that regard, **Contractor** accepts sole responsibility for insuring that notices and mailings, such as Safety Alerts, Safety Recall Notices and Customer Surveys, are sent directly to the **End User** of record.

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### 44. HANDLING OF ORDERS & PAYMENTS

In general, orders and payments will be handled as described below. More specific instructions and information regarding handling of purchase orders and the Order Processing Charge may be provided after contract award. Established procedures may be changed at any time by **H-GAC** as may be dictated by efficient business practice. The particulars of any sale, e.g. specific products, pricing, delivery, warranty, etc., will be in strict accordance with the terms and conditions of this Invitation and the specific contract awarded to **Contractor**. Beyond that:

- a. For any particular procurement to be made under the provisions of an **H-GAC** contract, **End User** and **Contractor** will discuss requirements and agree as to what will be provided.
- b. **Contractor** will prepare a Contract Pricing Worksheet and provide it to **End User**. The Worksheet will list everything being purchased including the base bid item(s), all published and unpublished options and the delivery date. All pricing shall be per the current contract.
- c. **End User** will send a purchase document to **Contractor**, which **Contractor** will fax **H-GAC** together with the Contract Pricing Worksheet. **NOTE: Contractor** agrees not to offer, agree to or accept from **End User** any terms or conditions that conflict with or contravene those in **Contractor's** **H-GAC** contract, except for pricing discounts.
- d. **H-GAC** will prepare an "Order Confirmation" and transmit it to **End User** and to **Contractor**. The Order Confirmation verifies that **Contractor** has a valid **H-GAC** contract and that the order is in compliance with the requirements of the **H-GAC** Cooperative Purchasing Program. **Contractor** will not ship any goods before receipt of both **End User's** purchase document and **H-GAC's** Order Confirmation.
- e. On notification that **Contractor** has received an order, **H-GAC** will invoice **Contractor** for the applicable Order Processing Charge. **NOTE: The Order Processing Charge is charged to Contractor, EXCEPT in the**

**case of motor vehicles.** For all sales of motor vehicles the Order Processing Charge is levied on the **End User**, collected by **Contractor**, and remitted to **H-GAC** by Contractor.

- f. **Contractor** will deliver products/services ordered, and will invoice **End User** for products/services accepted by **End User**. (See other Sub-Section herein dealing with Product Delivery.) **Contractor** will not invoice before shipment has been made.
- g. **End User** will pay **Contractor** for those products and/or services ordered which have been received and accepted. Under no circumstances shall any check be made payable to a representative or agent. Should a representative or agent submit an invoice to **End User** for any cost related to a purchase order issued to **Contractor** for products/services covered by an **H-GAC** contract, such invoice shall be forwarded to **Contractor** and **Contractor** will take action to correct the error.
- h. Upon delivery of any product/service by **Contractor** and acceptance by **End User**, **Contractor** shall remit to **H-GAC** the full amount of the applicable Order Processing Charge in accordance with the payment terms established in the **H-GAC** contract. Note, the Order Processing Charge is due whether or not **Contractor** has ever received an invoice from **H-GAC**. Sales executed based on the particulars of **Contractor's H-GAC** contract, without payment of the Order Processing Charge, may constitute fraud.

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#### 45. PRICE CHANGES

- a. Any permanent increase or decrease in offered pricing for a base contract item or published option is considered to be a price change. Temporary increases in pricing by whatever name (e.g. 'surcharge', 'adjustment', 'equalization charge', 'compliance charge', 'recovery charge', etc.), are also considered to be price changes.
- b. Except in the case of contracted published catalogs and price sheets, prices for Base Bid Items and Published Options are expected to be held firm for a minimum of 90 days from the date an awarded Offeror signs the H-GAC contract. Thereafter, changes will be considered if accompanied by justifying documentation satisfactory to H-GAC. For published catalogs and price sheets which are on an H-GAC contract, requests to amend the contract to reflect any new published catalog or price sheet may be submitted whenever the manufacturer publishes the new document. Any such request must include the new catalog or price sheet.
- c. If **Contractor** routinely offers discounted contract pricing, **H-GAC** may request **Contractor** to accept amended contract pricing equivalent to the routinely discounted pricing.
- d. No price change will be allowed unless it has been reviewed and approved by **H-GAC** in writing. **Contractor** must have received **H-GAC's** written approval of any change prior to charging the new price or using it in any quotation prepared for an End User.
- e. Price change requests must be submitted to **H-GAC** in writing and must be received by **H-GAC** at least thirty (30) calendar days prior to the requested effective date of the change, and must state the time period for which the requested pricing will remain firm.
- f. Price change requests shall include **H-GAC Forms D** and **E**, or whatever documentation was used to submit pricing in the original Response hereto, showing all affected items with current contract price, requested price, and percentage change shown clearly for each. This documentation should be submitted in MSExcel format to facilitate analysis and updating of the website.
- g. Price change requests **MUST** be supported with substantive documentation (e.g. manufacturer's price increase notices, copies of invoices from suppliers, etc.) showing that **Contractor's actual costs** have increased. The Producer Price Index (PPI) may be used as partial justification, subject to approval by **H-GAC**, but no price increase based solely on an increase in the PPI will be allowed.
- h. All Products shall, at time of sale, be equipped as may be required under any then current applicable local, state, and federal government requirements. If, during the course of any contract, changes are made to such government requirements which cause a manufacturer's costs of production to increase, **Contractor** may increase Product pricing to the extent of **Contractor's** actual cost increase. The increase must be substantiated with support documentation acceptable to **H-GAC** prior to taking effect. Modifications to a Product required to comply with such requirements which become effective after the date of any sale shall be the responsibility of the **End-User**.
- i. In cases involving contract extensions exceeding sixty-one (61) days beyond the stated expiration date of the contract, **Contractor** may request a price change based on the same conditions as stated above. However the thirty (30) day prior notice is waived and **H-GAC** will consider the request immediately on receipt.
- j. **H-GAC** reserves the right to accept or reject any price change request. Acceptance, if granted, will be in writing and the approved changes will become part of the contract.

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#### 46. CONTRACT ITEM CHANGES

- a. If a manufacturer discontinues a contracted item, that item will automatically be considered to be deleted from the contract with no penalty to Contractor. However, **H-GAC** may at its sole discretion elect to make a contract award to the next low offeror for the item, or take any other action deemed by **H-GAC** to be in the best interests of **End Users**, at its sole discretion.
- b. If a manufacturer makes any change in a contracted item which does not affect the contract price, Contractor shall advise **H-GAC** of the details. If the 'new' item is equal to or better than the originally contracted item, the 'new' item shall be approved as a replacement. Otherwise **H-GAC** may allow or reject the change, or take any other action deemed by **H-GAC** to be in the best interests of **End Users**, at its sole discretion. If the change is rejected there will be no penalty to Contractor.
- c. If a manufacturer makes any kind of change in a contracted item which affects the contract price, Contractor shall advise **H-GAC** of the details. **H-GAC** may allow or reject the change at its sole discretion. If the change is rejected there will be no penalty to Contractor. However, **H-GAC** may elect to make a contract award to the next low offeror for the item, or take any other action deemed by **H-GAC** to be in the best interests of **End Users**, at its sole discretion.
- d. In the case of specifically identified catalogs or price sheets which have been contracted as base bid items or as published options, routine published changes to products and pricing shall be automatically incorporated into the contract. However, **Contractor** must still provide thirty (30) calendar days written notice and an explanation of the changes to products and pricing. **H-GAC** will respond with written approval.

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#### 47. FORCE MAJEURE

If either party shall be wholly or partially prevented from the performance of any contractual obligation or duty by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident., order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. Determination of Force Majeure shall rest solely with **H-GAC**.

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#### 48. PERFORMANCE UNDER CONTRACT

**H-GAC** is committed to insuring that **Contractor** provides effective and efficient service to all Participants in the Cooperative Purchasing Program, and expects that certain Performance Conditions must be met. Failure to meet these conditions may result in contract termination. In that regard, **Contractor shall:**

- a. Appoint a dedicated representative to be the contact person and focal point for all matters relating to End User quotations and orders. The representative shall have: A toll free phone number with voice mail; A fax number; A working e-mail address; and A postal address.
- b. Insure that the representative timely monitors all communication modes listed above, and promptly responds to communications from **End Users** and **H-GAC** in any of these modes. Phone calls will be promptly returned, in any event not later than the next business day. Acceptable failure will be due only to Force Majeure.
- c. Maintain sufficient qualified staff to promptly process all communications from **H-GAC** or **End Users**, and to efficiently, effectively and accurately service all requirements of the contract.
- d. As may be requested by **H-GAC**, replace any staff members who are not providing the service and expertise deemed necessary by **H-GAC** for acceptable support of **End Users**.
- e. Properly prepare and provide to **End User** a Contract Pricing Worksheet, or a quotation in other format as approved by **H-GAC**, for each and every order that is to be executed.
- f. Furnish, on request of **H-GAC**, reasonable data, forms and graphic material to be used in brochures or other print media, or on **H-GAC**'s website.
- g. Allow access to **H-GAC** authorized personnel for inspection of operating facilities, and auditing of purchase orders during the contract period, and for a period extending thru the completion of any outstanding orders. Site inspection may be arranged not less than ten (10) calendar days prior, shall include the names of all participants, and shall be at no expense to **Contractor**.
- h. **Reporting Requirements:**
  - **Contractor** agrees to submit written quarterly reports to **H-GAC** detailing all transactions during the previous three month period. Such reports shall include, but are not limited to the following:
  - **End User** name
  - Product/Service purchased, including Product Code if applicable

- End User Purchase Order Number
- Purchase Order Date
- Product/Service dollar amount
- **HGACBuy** Order Processing Charge amount
- Reports must be provided to **H-GAC** in MSEXcel or other acceptable electronic format, and are due by the 30<sup>th</sup> day of the month following the applicable quarter being reported.

i. Should **Contractor** default in providing Products or Services as required by this Invitation and the contract, recourse may be exercised thru cancellation of the contract and other legal remedies as may be appropriate.

#### 49. IMPLEMENTATION OF INTERNET BASED E-COMMERCE

**H-GAC** Cooperative Purchasing has adopted E-Commerce as part of its business model and maintains an internet website at [www.HGACBuy.org](http://www.HGACBuy.org). At any point in time, various information and process functions may be implemented and made operational thru the website, including but not limited to items such as:

##### Information Items

- |  |  |
|--|--|
| • Contract information                   | • Product and option item catalog listings     |
| • Procurement schedules                  | • <b>End User &amp; Contractor</b> information |
| • Response requirements & specifications |  |

##### Functions

- |  |                             |
|--|-----------------------------|
| • <b>End User</b> product inquiries      | • Shipping/Delivery notices |
| • Product configuration and price quotes | • Invoice generation        |
| • Purchase Orders and Confirmations      | • Payment remittances, etc. |

All **H-GAC Contractors**, as a condition of contract, will be required to work with **H-GAC** and it's E-Commerce provider(s) to maximize use of E-Commerce within the context of **H-GAC** Cooperative Purchasing business. **Offeror** is encouraged to refer to **H-GAC's** Cooperative Purchasing web site where additional information can be found. If you have any questions, please contact **H-GAC** for assistance.

#### 50. CONTRACTOR ORIENTATION/TRAINING

**H-GAC** believes that **Contractor's** familiarity with the operational policies and requirements of the Cooperative Purchasing Program is a key factor in achieving **End User** satisfaction. In that regard, the Contact Person listed on **Form A**, or an alternate, shall be required to participate in an **H-GAC** vendor orientation/training as soon as possible after contract award. In addition, any other of **Contractor's** staff who will be involved in any way with the **HGACBuy** Program should participate in orientation. The orientation may be presented as a teleconference or webinar, or may be held in **H-GAC's** offices as may be determined by **H-GAC** and **Contractor** to be the most efficient and effective form of delivery.

#### 51. LEGAL & CONTRACTUAL REMEDIES

##### RESOLUTION OF PROTESTED SOLICITATIONS AND AWARDS

##### Procedure

Any actual or prospective **Offeror** or **Contractor** who is aggrieved in connection with a purchase transaction may file a grievance. The grievance may be filed at any phase of the procurement. In order for an above mentioned party to enter the grievance process, a written complaint must be sent to the Office Services Manger of **H-GAC** by certified mail which identifies the following:

1. Name, mailing address and business phone number of the complainant.
2. Appropriate identification of the procurement being questioned.
3. A precise statement of reasons for the protest.
4. Supporting exhibits evidence or documents to substantiate any claims.

The grievance must be based on an alleged violation of **H-GAC's** Procurement Procedures, a violation of State or Federal law (if applicable), or a violation of applicable grant or contract agreements to which **H-GAC** is a party. Failure to receive a procurement award from **H-GAC** in and of itself does not constitute valid grievance. Upon receipt of grievance, the Office Services Manager will initiate the informal resolution process.

##### Expedited Resolution

The Procurement Officer or Departmental Manager responsible for the solicitation shall contact the complainant and all interested parties and attempt to resolve the allegations informally within ten (10) working

days from date of complaint. If the allegations are successfully resolved by mutual agreement, documentation will be forwarded to the Office Service Manager of the resolution with specifics on each point addressed in the original complaint.

If the Procurement Officer or Departmental Manager is not successful in resolving the allegations, the complaint along with the comments will be forwarded to the Office Service Manager immediately. The Office Service Manager will review all documentation. All interested parties will be given written notice of the date, time, and place of the hearing and an opportunity to present evidence. A written decision will be issued within five (5) working days after the hearing along with notice of appeal rights.

### **Appeals**

The complainant may appeal the Office Service Manager's decision by submitting a written appeal, within five (5) working days, to the Executive Director of **H-GAC**. The Executive Director, upon receipt of a written notice of appeal, shall contact the complainant and schedule a hearing within ten (10) working days. The Executive Director of **H-GAC** has the option of appointing a Hearing Officer to preside over the hearing. If appointed, the Hearing Officer shall conduct a hearing and forward a summary and recommended resolution to the Executive Director.

The decision reached by the Executive Director or his designee shall be final and conclusive. This decision will be forwarded to the complainant in writing within thirty (30) working days.

The **Contractor** may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a Court of competent jurisdiction.

### **RESOLUTION OF CONTRACT DISPUTES**

Upon breach or default, **H-GAC** shall give the **Contractor** written notice of default. If the default is not remedied, within a reasonable specified time from date of notification, to the satisfaction and approval of **H-GAC**, default will be declared.

Upon breach of contract or default, **H-GAC** may exercise any and all of its rights afforded by law, including but not limited to those referenced in the General Contract Provisions.

### **SOLICITATIONS OR AWARDS IN VIOLATION OF THE LAW**

Contracts awarded in violation of the competitive process or otherwise in violation of the law are voidable by **H-GAC**.

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## **52. NATIONWIDE SALES OPPORTUNITIES**

**HGACBuy** provides purchasing services to local governments qualifying non-profits throughout the nation, and desires to make established contracts available to them wherever and whenever practicable. Therefore, once a contract is awarded, **Contractor** is expected to expand the scope of its marketing effort to include sales to **End Users** in all areas of the United States, and/or to assign any **H-GAC** contract to another contractor(s) as deemed appropriate by **H-GAC** in the interest of its End Users.

- **Contractor** may sell through **HGACBuy** anywhere subject to compliance with applicable laws and regulations. If the market structure in which **Contractor** operates requires a contract assignment for any particular sale, **H-GAC** will expect **Contractor** to assign the contract to a Manufacturer or to another Dealer(s). Such assignment must be approved by **H-GAC**.
- **Contractor**'s differential costs (e.g. transportation & delivery charges) and allowances (e.g. manufacturer's sales incentives) related to any sale may be charged to buyer.

**End of Section-A**  
**GENERAL TERMS & CONDITIONS**

## Section-B Proposal-Specific Response Requirements

### Table of Contents

Sub-Section	Page
1.0 Introduction and Background .....	1
2.0 H-GAC Aggregation Model .....	2
3.0 Aggregation Members .....	2
4.0 Rights of Individual Member Agencies.....	2
5.0 Contracted REP's Scope of Work.....	2
6.0 Structure of Response and Required Information.....	3
Tab-A: Required H-GAC Forms .....	3
Tab-B: Business Qualifications.....	3
Tab-C: Personnel Qualifications .....	3
Tab-D: Financial Qualifications.....	3
Tab-E: Risk Management .....	4
Tab-F: General Experience and H-GAC Strategy .....	4
Tab-G: Billing and Rate Information .....	4
Tab-H: References .....	4
Tab-I: Sample Contract.....	4
7.0 Corporation Aggregation Fee: .....	5
8.0 Consultant Fee.....	5
9.0 Contract Term.....	5
10.0 Pro Forma Contract - Terms and Conditions for Retail Supply of Electricity.....	5
11.0 Evaluation Factors .....	5

#### 1.0 Introduction and Background

The Houston-Galveston Area Council (H-GAC) is a government regional planning commission. Included within the H-GAC agency is the HGACBuy cooperative purchasing program, which issues bid and proposal invitations and makes awards on behalf of our local government "Members" (municipalities, counties, K-12 schools, universities, hospital and special districts, and other local agencies), within and beyond Texas. One such contract covers the supply of electricity through retail electricity provider (REP) vendors (herein, shown as 'REP' or 'contractor'). This is provided through the H-GAC Energy Purchasing Corporation (herein, the 'Corporation'), a political subdivision corporation functioning as Texas "Class IIB" Public Aggregator, and registered as such with the Public Utilities of Texas (2001). Over 120 local government Members currently purchase electricity through the Aggregation, having purchased over 500 million kilowatt hours.

This Request for Qualifications (RFQ) has been created as a solicitation tool to enable The Corporation to identify and contract with a qualified Retail Electric Provider(s), who may provide electricity services for the Texas H-GAC Aggregation Members. Proposers shall, ideally, have a history of successful electricity contracts with local, state, or federal government interests

A contract will be executed between the Corporation and each REP who is issued an award by H-GAC pursuant to this solicitation. with the Corporaton's designated, independent Aggregation consultant coordinating the contract and renewal process for all Member electricity procurement contracts. This includes the consultant providing the following support services to facilitate the execution of new Member electricity supply and renewal contracts between the Corporation and the REP chosen by each respective Member:

- Obtain, review and update Member letter of authorization and account list.
- Forward Member account data to approved Retail Electric Providers.
- Consult with Members to ascertain account needs and contract preferences.

- Communicate and coordinate contract terms and pricing requests with REP's.
- Coordinate price quotes between REP's and Members.
- Coordinate the successful execution of an energy supply agreement.
- Review and monitor the contract terms for proper implementation.

## 2.0 H-GAC Aggregation Model

Governmental entities join the Corporation by passing a resolution to become a member of the Aggregation. This resolution automatically renews every year. Once an entity has joined the Aggregation, the process will be as follows:

1. The Member provides authorization for H-GAC and its consultant to obtain its most recent electrical usage history.
2. H-GAC and its consultant will discuss contract options and favorable times for pricing with the Member.
3. H-GAC and its consultant will provide Member information to all REPs having contracts with H-GAC.
4. When Member is ready to transact, H-GAC and its consultant will notify all appropriate REPs to solicit pricing.
5. H-GAC and/or its consultant will discuss pricing options with Member.
6. Member will transact with a particular REP, sign, and return appropriate contract documents.
7. REP and Member work together on transition to new contract.
8. Transition will be monitored by H-GAC and its consultant.
9. Member may opt to negotiate and renew existing contracts through HGAC Energy Purchasing with the incumbent REP.

**REP contractor will direct all bills for electricity usage directly to the Member agency. H-GAC and the Corporation will not take title to, nor process billing for any electricity. All payments will be made directly from the Member to the contractor.**

## 3.0 Aggregation Members

A three-way functionality will exist between the Corporation, the REP, and each H-GAC Aggregation Member. The Corporation acts on behalf of its Aggregation Members in terms of soliciting contracted electricity pricing. However, the individual Members will be the actual buyers of the electricity and will execute electricity supply contracts ("Supply Agreements", along with any H-GAC amendments containing terms applicable to the Aggregation Members) with the contracted REPs.

## 4.0 Rights of Individual Member Agencies

Proposers are advised of the position of the Corporation (and by extension, its Aggregation consultant) as a designated agent for specific government Members. This designation is for the products and services as stated in this RFQ. The REP is expected to offer a supply agreement to Members, in accordance with the terms and conditions of the contract between the REP and the Corporation. Additional supply agreement language (for clarification, additional specifications, qualifications, or other conditions) shall not be issued without approval of the Corporation.

## 5.0 Contracted REP's Scope of Work

H-GAC expects all REP contractors to perform the following services for Members of the Corporation:

- Provide timely and accurate pricing quotations when establishing initial contract pricing.
- Process letters of authorization and ESI-ID lists for pricing.
- Provide copies of executed contracts for respective Members and the Corporation.
- Provide account management support for all contracted Members.
- Provide general customer service support access numbers for all contracted customers.
- Provide amendment process guidelines to add or delete ESI-IDs from a contract.
- Provide ESI-ID switch report and expected date of first invoice following contract execution.
- Provide a waiver of deposit, or other credit assurance, for Members, unless unsatisfactory credit report is obtained.
- Provide updates to the Corporation of any additions or changes to Member contacts, billing address or mailing address information.

- Notify the Corporation prior to any disruption of service related to maintenance or billing issues.
- Notify the Corporation of any Member complaints recorded, especially P.U.C. escalated complaints.
- Notify the Corporation prior to executing any contract amendments.
- Assign adequate staff to perform its obligations hereunder and under any supply agreements with Aggregation Members

### 6.0 Structure of Response and Required Information

This RFQ is intended as a basis for selection of an experienced and qualified retail provider(s). In that regard, respondents shall be required to submit proposals that provide all information requested and conform to the requirements outlined herein. Consistent with this, Proposer is responsible for supplying information necessary to put Proposer in the best light with respect to H-GAC's evaluation, allowing H-GAC to acquire an accurate view of Proposers' capabilities. **If any requirement herein conflicts with any requirement for responses detailed in Section-A, it shall supersede the Section-A requirement.**

As per Section-A, proposal package shall be affixed with the label shown on this Invitation's cover page. Proposer shall provide a printed original, plus one printed copy of the response, each contained in a separate hard-sided, three-ring binder. The binders shall be labeled "Original" and "Copy", and shall be organized, tabbed, and labeled in format and sub-sections described below. In each tabbed Section, Proposer shall, at a minimum, provide the requested information, formatted at Proposer's discretion, unless otherwise indicated. The **complete proposal** must also be copied onto a CDRom, DVD, or flash drive, and submitted in the 'Copy' of the proposal. Completed electronic copies of H-GAC forms shall be in their original Excel format.

#### Tab-A: Required H-GAC Forms

Completed H-GAC Form-A (signed) and Form-B (and Form CIQ if applicable - ref. Section-A).

#### Tab-B: Business Qualifications

- Provide your Texas Public Utility Commission REP registration number.
- Describe your organization's business structure (i.e. corporation, LLC, LP, divisions, interests)
- Is your business eligible to serve all competitive areas of the ERCOT grid?
- Provide an estimate of the number of employees in your business entity, and those in Texas.
- Provide an estimate of the number of customers served by your business entity, in Texas, and beyond.
- Was your organization part of a regulated utility prior to 1-1-2002?
- Does your business own/manage electric retail service providers in other states or countries?
- List the states in which company currently operates retail electric business units.
- Identify any affiliates in the electric transmission, distribution, generation, sales, and/or service industry in Texas and any other State.

#### Tab-C: Personnel Qualifications

- Provide the professional qualifications of personnel assigned to this project.
- Indicate the contact information for the staff that will be directly interacting with procurement or account management activities.
- Designate a single point of contact for your organization.

#### Tab-D: Financial Qualifications

- Provide a copy of your annual report or the most recently audited financial statements, to include: income and balance statements for the three most recent fiscal periods. If audited financial statements are not available, provide a formal business report from a third party review.
- List pending financial issues that could impact your organization in any way in terms of fulfilling services under this proposal.
- Provide current levels for your Price to Earnings ratio (P/E) taken from the from the last four quarters and the most current report on earnings per share (EPS).
- For your business and/or corporate parent/affiliate, what is the bond rating for the current and preceding three years (bond rating from an established rating entity).

Tab-E: Risk Management

- Describe your organization's Risk Management program and strategy.
- What percentage of your organization's portfolio is hedged?
- Describe the survivability of your organization's secured hedges, and verify that these hedges are not subject to withdrawal or loss at any time.
- Describe your organization's access to primary and secondary credit line instruments, and list the secured nominations of significant credit lines.
- Describe your organization's indemnification policy in the event of default, loss of REP status, or any other event leading to the inability to serve H-GAC Aggregation Members.
- Describe your organization's ability to avoid a market default or exit related to the loss of a supplier of hedge.

Tab-F: General Experience and H-GAC Strategy

- Number of years in the energy sales business in Texas, nationally, and internationally.
- Provide evidence of experience with government agency contracting, including electric sales to Texas entities.
- Describe your organization's model for growth – specifically addressing the retail, commercial, government, and industrial sectors.
- Provide examples of experience with energy management projects.
- List any administrative agency and/or court ordered penalties or other sanctions levied against your organization within the last three years.
- Provide information that demonstrates an understanding of the H-GAC Aggregation and details your organization's plans for promoting the H-GAC Aggregation to potential new Members.

Tab-G: Billing and Rate Information

- Provide a list of the components that are normally included in your commodity cost, and which components are excluded.
- Indicate, and describe, if additional charges are added to the TDSP distribution charge.
- Provide a sample of an individual billing statement and a summarized statement, if available.
- List any other services, affinity programs, or value-adds that are available for our Members.

Tab-H: References

- The names of 5 (five) or more government or non-profit agencies within the competitive retail electricity areas of Texas or other states which have entered into a contract for the supply of electricity within the last 2 (two) years.
- Proposer shall identify which types of governmental entities to whom it intends to market its services as an H-GAC contractor - municipalities, counties, school districts, universities, utility districts, et cetera (and include references for these local government types).
- Proposer may provide reference information in whatever format desired, but the information supplied should include the following specific information:
  - Agency name
  - Contact person name and email
  - Address
  - Phone & Fax numbers
  - Type and length of contract
- As applicable, proposer may provide testimonials from customers, especially government agencies.

Tab-I: Sample Contract

The proposer shall supply a sample of the standard form contract it uses with governmental entities ("supply agreement") and any related exhibits addendums associated with this energy contract. Any such

sample agreement for the supply of electricity should contain the business's most recent retail sales contract terms and conditions that the REP proposes for use with the Aggregation Members.

### **7.0 Corporation Aggregation Fee**

The Corporation Aggregation Fee will be assessed to the Aggregation Members through the REP contractor's billed charges. The fee is in addition to any supply and TDSP fees, or any other regulated fees. On a monthly basis, the REP contractor will remit the fee collected from the Members to the Corporation. REP contractors shall supply a monthly summary report to the Corporation and/or its consultant detailing the Member fee payments in the format provided by H-GAC.

### **8.0 Consultant Fee**

The Corporation's aggregation consultant serves as an integral part of the H-GAC aggregation model. The Corporation's consultant receives its fees directly from the retail electricity provider under contract with the Corporation. The rate and structure are contractually fixed by the terms of the contract between the Corporation and the consultant. Successful RE04-11 proposers will be able to review specific consultant fee profiles prior to contracting with the Corporation. Additionally, during the course of the contract with the Corporation, the REP contractor shall be given the opportunity to review any new consultant fee structure that may emerge as a result of a new consultant agreement, and amend REP-Corporation agreements.

### **9.0 Contract Term**

Any contract between the Corporation and an REP shall remain in effect so long as there is a supply agreement between an H-GAC Aggregation Member and the H-GAC contracted REP, provided that REP-end user supply agreement was executed within the bounds of this Contract. Aggregation fee payments due to the Corporation from an H-GAC contracted REP shall survive termination of any contract between the Corporation and the REP.

### **10.0 Pro Forma Contract - Terms and Conditions for Retail Supply of Electricity**

Included in this specification package (Section-D) is the *Agreement to Participate as a Retail Electricity Supplier for Members of the H-GAC Energy Purchasing Corporation* (the "Contract"). This Contract consists of the *Master Terms and Conditions for Retail Supply of Electricity to Members of the H-GAC Energy Purchasing Corporation* (the contract document binding any REP awardee and the H-GAC Energy Purchasing Corporation), the *Participation Confirmation*, and the Cover Sheet. An REP's Supply Agreement will be included with each Participation Confirmation.

### **11.0 Evaluation Factors**

- Proposals will be evaluated and scored using the criteria in the table below, with a possible top score of 100. Criteria descriptions are not meant to be exhaustive and H-GAC may use any relevant information in the evaluation process, including the use of other sources and standards as may be deemed necessary to effectively rank respondents. Proposers with a score of at least 75 may be eligible for a contract award recommendation, at H-GAC's sole discretion.
- If an award recommendation is made and approved by H-GAC's Board of Directors, the Proposer may be invited to execute a contract, at H-GAC's sole discretion. H-GAC reserves the right to make as many or as few proposal counter-offers as may be deemed necessary to secure the final contract terms that are judged to best serve the interests of the Aggregation and the H-GAC Energy Purchasing Corporation.

<b>Evaluation Criteria</b>	
<b>Criteria Description</b>	<b>Possible Point Award</b>
A. Required H-GAC forms (signed Form-A)	<b>Pass/Fail</b>
B. Business Qualifications	<b>20</b>
C. Personnel Qualifications	<b>10</b>
D. Financial Qualifications	<b>15</b>
E. Risk Management	<b>15</b>
F. General Experience	<b>15</b>
G. Billing and Rate Information	<b>15</b>
H. References	<b>10</b>
I: Sample Supply Contract	<b>Pass/Fail</b>
Highest Possible Score	<b>100</b>

----- End of Section B -----



## SECTION-C: H-GAC FORMS

For Use In Responding To Competitive Bid And Proposal Invitations

Invitation No.: RE04-11

Title: Retail Electric Provider

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This Section contains the following H-GAC Forms.

FORM	DESCRIPTION
Form A:	Offeror Identification and Authorized Signatory
Form B:	Historically Underutilized Business Enterprises

These forms are hereby made available in electronic format. They should be copied to Offeror's computer for completion and/or printout as required. The forms **may not** be changed or altered in any way, except as may be specified on the form.

**All** completed forms must also be submitted electronically on CD-ROM, excepting of course, for signatures. The printed "Original" of the response will be considered as the official copy in case of any discrepancy between the electronic version and the printed Original.

**FORM-A: OFFEROR IDENTIFICATION & AUTHORIZED SIGNATORY****(DO NOT** *handwrite on this form.* **Information must be typed)**

Invitation No.: RE04-11

Invitation Title: Retail Electric Provider

Offeror Company: \_\_\_\_\_

(Legal name of business which will appear on contract, if awarded)

Offeror Status:  **Manufacturer**       **Dealer/Distributor**       **Other**Response Type(1):  **Single Offeror Acting Alone Or As Lead**       **Multiple Offerors Acting Jointly**

Contract Signatory(2): \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address(3): \_\_\_\_\_

Street/PO Box

City

State &amp; Zip

Physical Address: \_\_\_\_\_

Street

City

State &amp; Zip

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

Federal Tax ID No.: \_\_\_\_\_

Web Page URL: \_\_\_\_\_

(1) If Joint Offering, all parties must submit a signed Form A. A contract will be offered to each.

(2) Name of person who will sign final contract documents if an award is made.

(3) Address to which final contract documents would be sent for signature.

**Member Contact Information**

Contact Person(4): \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Street/PO Box

City

State &amp; Zip

Physical Address: \_\_\_\_\_

Street

City

State &amp; Zip

Toll Free Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

(4) Web site contact: person whom end users will contact for product information and to get pricing quotes.

**The Signatory below, on behalf of Offeror:**

- Acknowledges having thoroughly reviewed the Invitation;
- Attests to having the authority to sign this response and commit Offeror to honor all requirements;
- Makes, under penalty of perjury, all required Offeror Certifications as detailed in General Terms;
- Certifies that all information provided in this Response is true and correct.

**Signature:** \_\_\_\_\_**Title:** \_\_\_\_\_**Printed Name:** \_\_\_\_\_**Date:** \_\_\_\_\_

**Title: Retail Electric Provider****Offeror:** \_\_\_\_\_

Most, if not all, of the Members of HGACBuy are subject to various requirements relative to purchasing goods and services from Historically Underutilized Business Enterprises (HUBs)(See Note 1). These requirements are promulgated by federal and state governmental authorities, and include measureable criteria such as 'percentage of total dollars spent directed to HUBs', 'number of HUB contractors used', 'HUB subcontractors employed by primary contractors', etc. These requirements are generally formalized in goal oriented programs.

HGACBuy is committed to promoting full and equal business opportunities for HUB contractors, and to assisting Cooperative Purchasing Program (COOP) Members in meeting mandated HUB goals. In that regard, Contractor shall make a good faith effort to use the services of Certified/Listed (See Note 2) HUBs whenever possible.

As part of a good faith effort, Contractor agrees to work with and assist HGACBuy Members in meeting HUB targets and goals, as may be required by any rules, processes or programs they might have in place. Such assistance may include such things as compliance with reporting requirements, provision of documentation, consideration of 'Certified/Listed' subcontractors, provision of documented evidence that an active participatory role for a HUB entity was considered in a procurement transaction, etc.

Note 1: There are many designations other than "HUB" used across the country within various jurisdictions. Examples include terms such as Disadvantaged Business Enterprise (DBE), Minority Owned Business Enterprise (MBE), Woman Owned Business Enterprise (WBE), Small Disadvantaged Business (SDB), Small, Woman or Minority-owned Business (SWAM), etc. Regardless of the formal designation, the overall objective of the relevant programs is basically the same, i.e. to insure that disadvantaged and underutilized members of the business community receive a fair share of public spending. The term HUB as used herein shall be understood to encompass all such programs/business enterprises, no matter what terminology is used by the Member.

Note 2: The terms "Certified" and "Listed" as used in conjunction with HUB programs relate to the process of HUB qualification review. Jurisdictions usually require that companies claiming HUB status be reviewed and confirmed as meeting certain minimum requirements to claim that status, and that the review and confirmation process be carried out by certain designated entities. They are then "Certified" or "Listed" by having their name included on an official listing published by the Certifying or Listing Authority.

Accepted and Agreed By:

Title:		Date:	
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**HUB Status Of Offeror** Offeror is a HUB, as detailed below. Offeror is not a HUB.

Designation(s):

 HUB DBE MBE WBE Other

Certifying/Listing Authority(s):

**Subcontracts**

On a separate sheet, list any subcontractors that would be employed in providing products or services related to this procurement. Include subcontractor name, designation (HUB, DBE, etc.) and certifying/listing authority.

 Subcontractor List attached. No Subcontractors will be used.

**This is a sample of the contract that will be sent to you for execution IF you are recommended for a contract award. Do NOT complete and return with your Response.**

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**AGREEMENT TO PARTICIPATE AS A RETAIL ELECTRICITY SUPPLIER FOR MEMBERS OF THE  
H-GAC ENERGY PURCHASING CORPORATION**

\*\*\*\*

**COVER SHEET**

This Agreement to Participate As a Retail Electricity Supplier for Members of The H-GAC Energy Purchasing Corporation is made as of the following date \_\_\_\_\_ (“Effective Date”). The Agreement, together with the Master Terms and Conditions For Retail Supply of Electricity to Members of the H-GAC Energy Purchasing Corporation, Version 2:February 11, 2005 (the “Master Terms and Conditions”), incorporated herein by reference, and all Participation Confirmations executed by the Parties pursuant to the Master Terms and Conditions (and any attachments thereto), also incorporated herein by reference, shall together constitute a single integrated agreement between the Parties and shall be referred to as the “Contract.” The Parties to this Contract are the following:

**Name:** H-GAC Energy Purchasing Corporation      and      **Name:** \_\_\_\_\_

Notice under this Contract shall be given to the other Party at the following respective addresses:

H-GAC Energy Purchasing Corporation  
Attention: \_\_\_\_\_  
3555 Timmons Lane, Suite 500  
Houston, Texas 77027-6748  
Phone: (713) 993-\_\_\_\_  
Fax: (713) 993-4548

\_\_\_\_\_  
Attention: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_  
Fax: (\_\_\_\_) \_\_\_\_ - \_\_\_\_

\*\*\*\*\*

IN WITNESS WHEREOF, the Parties have caused this Contract to be duly executed as of the date first above written, in duplicate originals, each of which shall constitute and be an original, and the persons executing this Contract represent and warrant that they are duly authorized to execute this Contract on behalf of the Party they represent and thereby bind that Party to the Master Terms and Conditions.

**H-GAC ENERGY PURCHASING CORPORATION**      \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MASTER TERMS AND CONDITIONS FOR  
RETAIL SUPPLY OF ELECTRICITY  
TO MEMBERS OF THE  
H-GAC ENERGY PURCHASING CORPORATION  
Version 2: February 11, 2005**

**Preliminary Statement**

The H-GAC Energy Purchasing Corporation (the "Corporation") is a non-profit political subdivision corporation formed by the Houston-Galveston Area Council of Governments ("H-GAC"), a public instrumentality established pursuant to Senate Bill 7 of the 76th Texas Legislature, as amended from time to time, to perform an essential public function. H-GAC organized the Corporation for the purpose of helping political subdivisions in Texas to purchase and receive electricity and related services on advantageous terms. Political subdivisions of the State of Texas become a Member of the Corporation by resolution. The Supplier has been selected to offer to sell electricity and related services to Members.

The Corporation shall conduct a process through which the Supplier will have the opportunity to offer its best pricing which a Member, potential Member, or group of Members as defined by the Corporation, can accept, in the manner set forth in this Contract, pursuant to schedules set by the Corporation. Any potential Member can become a Member prior to or in conjunction with such pricing process. Additional pricing opportunities will be available as additional Members, potential Members, or groups of Members join the Corporation's aggregation, or as existing Members' supply agreements are up for renewal.

The Parties hereby agree as follows.

1. Sale of Electricity.

- (a) Members. The Supplier shall be approved to offer and sell electricity to all Members who on or prior to a transactable price offer to enter into a Supply Agreement with the Supplier according to terms and conditions (other than the transactable price, the price structure, length of term, and the penalty price and penalty threshold for over or under usage, and other matters that the Corporation determines should be left to negotiation with the Member) that have been pre-approved by the Corporation pursuant to one or more executed Participation Confirmations. Supply Agreements may be executed via facsimile, email of a scanned copy of the original signed Supply Agreement, or face-to-face transactions. The Supplier shall begin supply with respect to each Member's account on the meter read date (consistent with Public Utility Commission of Texas rules) for each such Account first following the date set forth in the relevant Supply Agreement for the commencement of service.
  - (b) Pricing. Price offer requests will be individually coordinated and negotiated with each Member, potential Member, or group of Members as defined by the Corporation, based upon the needs and availability of favorable pricing levels from the Market. The Corporation and/or its Designee will coordinate pricing and Supply Agreement offers between the Supplier and the Members.
  - (c) Terms and Conditions. Each Participation Confirmation between the Parties shall be governed by this Master Terms and Conditions. Any inconsistency between the terms of this Master Terms and Conditions and any executed Participation Confirmation shall be resolved in favor of the terms of the executed Participation Confirmation. Any inconsistency between the terms of any executed Participation Confirmation with any other executed Participation Confirmation shall be resolved in favor of the terms of the executed Participation Confirmation having the latest date of execution. Any amendment to the terms and conditions of a Supply Agreement entered into by a Member shall be subject to prior review and consent of the Corporation, which consent shall not be unreasonably withheld.
2. Adequate Staffing. The Supplier shall at all times assign adequate staff to perform its obligations hereunder and under the Supply Agreements. The Supplier shall designate a Project Manager who will be the point of contact for the Corporation regarding all activities. The Project Manager will be responsible for supplying activity reports to the Corporation on a pre-determined regularly scheduled basis.
3. Disclosure of Agreements with TDSPs. The Supplier shall disclose immediately upon written request from the Corporation all agreements it may have with any TDSP that may relate to or affect the performance of its billing and operational obligations hereunder or under any of the Supply Agreements.

4. Energy Services. The Corporation believes that the offering of a wide array of energy related services is an important component of the aggregation program. With the approval of the Corporation (not to be unreasonably withheld or delayed), energy related services may be provided to Members by Supplier. Members may contact Supplier for more information should they desire additional information.
5. Term. By executing a Cover Sheet and a Participation Confirmation, the Supplier enters into an agreement with the Corporation for purposes of supplying electricity and electricity related services pursuant to the terms and conditions of this document (the "Contract"). This Contract with a Supplier shall end upon the termination of all that Supplier's Supply Agreements with Members provided, however, that to the extent that the Supplier extends any Supply Agreement or otherwise continues to supply electricity to any present or former Member this Contract shall continue in effect with respect to such present or former Member. Notwithstanding anything to the contrary in this document, either Party may terminate this Contract with thirty (30) calendar days prior written notice to the other Party. In the event that either Party should terminate this Contract in compliance with this paragraph, each Member's individual Supply Agreement shall survive the termination of this Contract and shall remain in effect until the agreed upon expiration date contained in that Supply Agreement.
6. Aggregation Fee. The Supplier, on behalf of the Corporation, shall bill and collect aggregation fees from Members of the Corporation for (a) the purchase of Electricity under Supply Agreements, and (b) the purchase by Members of energy related services as contemplated in Section 4, each set by the Corporation from time to time by written notice ("Aggregation Fees"). The Supplier shall remit all Aggregation Fees for each calendar month to the Corporation on or before the twentieth (20<sup>th</sup>) Business Day of the following calendar month. Supplier shall have no obligation to enforce or pursue collection on behalf of the Corporation in the event a Member does not pay the Aggregation Fee. If Supplier fails to timely remit such Aggregation Fees, the unpaid balance shall accrue interest on each calendar day past due at a rate equal to 6 % per year, not to exceed the maximum rate allowed by law. Should the Corporation or Supplier terminate this Contract pursuant to Section 5, aggregation fees due under Members' surviving Supply Agreements and offers for supply of electricity shall remain due and payable to the Corporation until the original expiration date of said Supply Agreements. Other fees approved by the Corporation, payable to the Corporation and/or its Designee, may be required and added to the commodity cost to cover costs associated with Corporation approved services or products.
7. Customer Service; the Corporation's Role. The Supplier shall become the principal point of contact for the Members' electric needs that are the subject of the Supply Agreements. The Parties agree that the Corporation and/or its Designee may, at the option of the Corporation and one or more Members, each from time to time, assist such Members in their relations with the Supplier, including without limitation acting as the representative or agent of such Members. In addition, the Supplier acknowledges the Corporation's role as organizer of the Members and/or potential Members, and agrees that the Corporation shall at all times have the right but not the obligation to act as the coordinator and ongoing organizer of the Members and/or potential Members.

The Supplier shall cooperate with the Corporation in all reasonable respects with efforts by the Corporation to monitor the performance of the Supplier hereunder and under the Supply Agreements, including supplying the Corporation upon request with all relevant performance and operational data, including without limitation any agreements between the Supplier and any other entity or person regarding billing, payment calculation, collection and order of payment applicable to payments due from Members, and usage, billing and payment data analyses developed by the Supplier. The Supplier shall at the Corporation's option from time to time provide the Corporation immediately with all information and correspondence provided to Members and/or potential Members, both on an individual and aggregate basis, including without limitation billing, consumption and load data to the extent allowed by law and to the extent not subject to a confidentiality agreement with the relevant Member and/or potential Member. Where Member consents in writing to the release of information, Supplier agrees to obtain from TDSPs and provide to the Corporation all data available to the Supplier requested by the Corporation and the transactions relating to it.

8. Marketing Efforts. The Supplier is encouraged to use reasonable efforts to market the offering of electricity supply hereunder to potential Members. The Corporation shall provide information and materials for Supplier to use for marketing the Corporation's energy program. The Corporation may provide a marketing and communication strategy that may include without limitation presentation materials and branded sales collateral for distribution.
9. LIMITATION OF LIABILITY.

- (a) NOTWITHSTANDING ANYTHING IN THESE TERMS AND CONDITIONS, PARTICIPATION CONFIRMATION, ANY SUPPLY AGREEMENT, OR ANY OTHER AGREEMENT RELATING THERETO OR ARISING THEREFROM, THE CORPORATION SHALL NOT BE RESPONSIBLE OR LIABLE IN ANY MANNER TO THE SUPPLIER OR ANY SHAREHOLDERS, AGENT OR AFFILIATE OF THE SUPPLIER FOR THE OBLIGATIONS OR ACTS OF ANY ACTUAL OR POTENTIAL MEMBER.
- (b) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, WHETHER ARISING IN TORT OR CONTRACT OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH DAMAGES ARISE FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
- (c) AT NO TIME SHALL THE CORPORATION TAKE TITLE TO ANY ELECTRICITY SOLD THROUGH THIS PROGRAM AND THE ENSUING SUPPLY AGREEMENTS.
10. INDEMNITY. THE SUPPLIER AND THE CORPORATION EACH AGREE TO DEFEND, INDEMNIFY AND SAVE THE OTHER AND ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, PARTNERS AND AFFILIATES HARMLESS AGAINST ANY AND ALL CLAIMS, LIABILITIES, DEMANDS, ACTIONS, JUDGMENTS, LOSSES, COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS FEES), SUITS OR DAMAGES ARISING FROM OR DIRECTLY RELATING TO THE ACTS OR OMISSIONS OF THE INDEMNIFYING PARTY IN CONNECTION WITH THE PERFORMANCE OF ITS OBLIGATIONS ARISING FROM OR RELATING TO THE SUBJECT MATTER OF THIS CONTRACT, EXCEPT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY SEEKING SUCH INDEMNITY.
11. Assignment. This Contract shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Neither Party may assign, delegate or otherwise transfer any of its rights or obligations under this Contract without the prior written consent of the other Party. Such consent shall not be unreasonably withheld.
12. GOVERNING LAW; VENUE. THIS CONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, OTHER THAN THOSE RELATING TO CHOICE OR CONFLICT OF LAW, AND THAT THE TERMS OF THIS CONTRACT WERE NOT PREPARED BY ANY PARTY TO THE EXCLUSION OF ONE OR THE OTHER. ANY ACTION AT LAW, SUIT IN EQUITY OR JUDICIAL PROCEEDING ARISING FROM OR IN CONNECTION WITH, OUT OF OR RELATING TO THIS CONTRACT SHALL BE LITIGATED IN THE COURTS OF LAW LOCATED IN HARRIS COUNTY, OF THE STATE OF TEXAS. NOTHING IN THIS CONTRACT SHALL DISPLACE THE APPLICABILITY OF ANY FEDERAL LAW OR THE JURISDICTION OF THE PUBLIC UTILITY COMMISSION OF TEXAS, THE FEDERAL ENERGY REGULATORY COMMISSION, OR ANY OTHER REGULATORY AGENCY OR BODY HAVING JURISDICTION.
13. Headings. The headings contained herein are used solely for convenience and do not constitute a part of this Contract nor shall such headings be used in any manner to aid in the construction of this document.
14. Relationship of the Parties. This Contract shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have the right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.
15. Waiver. Any waiver by either Party of performance due by the other Party hereunder shall be without prejudice to the right of that waiving Party to demand future performance which is in strict compliance with the terms hereof.
16. Complete Agreement. This Contract, including the Participation Confirmation and attachments thereto, and the Cover Sheet hereto, constitute the full and complete agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements, whether oral or written, between the Parties with respect to such subject matter. This Agreement may not be released, discharged, supplemented, amended or modified in any manner except by an instrument in writing signed by a duly authorized representative of each of the Parties hereto.

**PARTICIPATION CONFIRMATION  
AN AGREEMENT BETWEEN  
H-GAC ENERGY PURCHASING CORPORATION  
AND**

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This Participation Confirmation, dated as of \_\_\_\_\_, 20\_\_ , is between H-GAC Energy Purchasing Corporation (the "Corporation") and \_\_\_\_\_ ("Supplier").

The Supplier has been selected by the Corporation to offer to sell electricity and related services to Members of the Corporation. By executing this Participation Confirmation the Supplier agrees to all terms and conditions contained in the document entitled **Master Terms and Conditions For Retail Supply of Electricity to Members of the H-GAC Energy Purchasing Corporation** (the "Master Terms and Conditions") and the associated Cover Sheet, and therefore enters into the *Agreement to Participate As a Retail Electricity Supplier for Members of The H-GAC Energy Purchasing Corporation* with the Corporation pursuant to the Master Terms and Conditions. All terms herein are governed by the definitions in the Cover Sheet and Master Terms and Conditions.

The Supply Agreement, and the terms and conditions thereof that have been pre-approved by the Corporation, are reflected in Attachment A hereto and are incorporated by reference herein. Supplier shall offer the Supply Agreement reflected in Attachment A hereto to the individual Members, categories of Members, or both, listed on Attachment B hereto and incorporated by reference herein.

IN WITNESS WHEREOF, the Parties have executed and delivered this Participation Confirmation as of the date first above written, in duplicate originals, each of which shall constitute and be an original, and the persons executing this Contract represent and warrant that they are duly authorized to execute this Participation Confirmation on behalf of the Party they represent and thereby bind that Party to the Master Terms and Conditions.

**H-GAC ENERGY PURCHASING CORPORATION**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_