



**HOUSTON-GALVESTON AREA COUNCIL
COOPERATIVE PURCHASING PROGRAM**
Request for Proposal (RFP)
Job Order Contracting IDIQ
Solicitation Number: JC02-23

EVENT	DATE
ISSUED:	Friday, September 30, 2022
PRE-PROPOSAL/BID CONFERENCE DATE:	Tuesday, October 18, 2022 @ 2:00 p.m. CST Information on how to register for the meeting is on page 19.
QUESTIONS DEADLINE:	Thursday, October 20, 2022 @ NOON CST
SHAREFILE FOLDER ACCESS REQUEST DEADLINE:	Wednesday, November 09, 2022 @ NOON CST Requests made after this time will <u>not</u> be accepted.
CLOSING DATE / SUBMISSION DEADLINE:	Thursday, November 10, 2022 @ NOON CST
ESTIMATED BOARD APPROVAL DATE:	Tuesday, January 17, 2023
ESTIMATED CONTRACT START:	February, 2023
FORMAT:	One (1) electronic copy in PDF format. Please combine all files being submitted into one (1) pdf. Additional files may not be reviewed. Pricing sheets must be submitted in Excel format.

Please read the submission instructions carefully, exceptions cannot be made if instructions are not followed:

SUBMISSION: Respondent must email the below information (1-4) to HGACBuySolicitations@h-gac.com to request access to the folder where Respondent will upload the Response. **The request for access to the folder must be made before indicated deadline;** requests received after the deadline will **NOT** be accepted. SUBMISSIONS WILL **NOT** BE ACCEPTED BY EMAIL OR MAIL.

1. Company Name and Company Representative Name
2. Representative Email Address (for ShareFile folder access)
3. Subject Line: "ShareFile Folder Access Request"
4. The Solicitation Number (exactly as listed above)

If technical issues with the ShareFile System arise, preventing any Respondent from submitting a response within the two (2) hours preceding the deadline, the solicitation due date and time may be automatically extended for a period of 24 hours. Any technical issue must be with the ShareFile system and affect **all** respondents. H-GAC will verify the technical issue or unavailability of the ShareFile system. Technical issues localized to a single Respondent will not be considered cause for an extension. **It is strongly recommended that submissions be uploaded no later than two (2) hours prior to the stated deadline.** H-GAC is not responsible for attempting to resolve any technical issues occurring two (2) hours before the submission deadline, nor is H-GAC responsible for incomplete or late submissions. Recording of submission time/date will occur via ShareFile. Submissions uploaded after the deadline will not be accepted or opened. Responses may be submitted any time prior to the deadline. To satisfy any required public opening for RFP's and RFQ's, H-GAC will post only the names of the companies which submitted responses as soon as possible after the closing date. For IFB's, responses will be opened live online, those interested must attend to view the responses. All times and dates for these activities are posted under the named solicitation at <https://www.hgacbuy.org/bid-notice>.

SIGNATURE PAGE

Submission of a response will constitute acknowledgement and acceptance of all the terms and conditions contained in this Solicitation. Respondents, their authorized representative, and their agents are responsible for obtaining, and will be deemed to have, full knowledge of the conditions, requirements, and specifications of this Solicitation at the time a response is submitted to H-GAC.

Note: Submission must be signed by a duly authorized representative(s) of the respondent, which must be the actual legal entity that will perform the contract if awarded and any total fixed price contained therein will remain firm for a period of one-hundred eighty (180) days following the submission due date and can be further extended by mutual written agreement.

Respondent is <i>REQUIRED</i> to sign this <i>Signature Page</i> and return with the submitted response. An unsigned Submission will be deemed non-responsive. If Joint Response - each Respondent must complete this Signature Page, and all required applicable forms (excludes pricing sheets).	
Legal Name of Entity/Individual Filed with IRS for this Tax ID Number:	
Doing Business As (DBA) Name:	
Is Respondent business currently a Certified Small Business (SBA), Minority (MBE) or Disadvantaged (DBE)? Yes _____ No _____ If yes, copy of certificate must be attached.	
Company Mailing Address and Billing Address (if different from company address):	
City, State, Zip Code:	
Tax ID Number (EIN):	DUNS Number (if applicable):
Unique Entity ID (SAM.gov) REQUIRED (See pg. 7):	
Contact Person:	Phone Number:
Email Address:	
Authorized Signature personnel authorized to bind Respondent company to any contract/purchase order that may result from this Solicitation:	
Authorized Signature:	Date:
Printed Name:	Title:
Email Address:	

All clarifications to this Solicitation will be in writing and identified as a Letter of Clarification. Verbal communications and other written documents intended to clarify and interpret will not legally bind the Houston-Galveston Area Council. Only information supplied by a Letter of Clarification and posted to the H-GAC website should be used in preparing submissions. Any Letter of Clarification will be posted on the H-GAC website <https://www.hgacbuy.org/bid-notices> as soon as available. **H-GAC does not assume responsibility for the receipt of any Letters of Clarification by Respondent(s). Respondents must frequently check <https://www.hgacbuy.org/bid-notices> for updates.**

PART I – GENERAL INFORMATION

Houston-Galveston Area Council (H-GAC) Background

The Houston-Galveston Area Council (H-GAC) is the region-wide voluntary association of 133 local governments and local elected officials in the 13-county Gulf Coast Planning region of Texas. Local elected officials organized H-GAC in 1966 after authorization by State enabling legislation. Its service area is 12,500 square miles and includes more than 7-million residents. H-GAC is governed by a 36-member Board of Directors composed of local elected officials, who serve on the governing bodies of member local governments. All H-GAC programs are carried out under the policy direction of its Board of Directors. H-GAC's mission is to serve as the instrument of local government cooperation, promoting the region's orderly development and the safety and welfare of its residents. H-GAC is the regional organization through which local governments consider issues and cooperate in solving area-wide problems. Agency programs emphasize local government concerns, such as transportation, air and water quality, criminal justice, demographic analysis, mapping programs, and intergovernmental purchasing. H-GAC also serves its citizens through workforce development programs, services to the aging and elderly, and small business finance programs.

About the Cooperative

H-GAC is a government agency which provides a Cooperative Purchasing Program as part of its service to other government agencies. The Program currently makes blanket type contracts covering products and services for the use of its membership of more than 4500 local government participants in Texas and other States (Customers) which include cities, counties, emergency services districts, school districts, and non-profit organizations. Any local government or non-profit organization may participate in the Program if their state law allows. There is no cost to join and become a member of the H-GAC Cooperative Purchasing Program.

H-GAC's Cooperative Purchasing Program, known as HGACBuy, was established pursuant to Texas Interlocal Cooperation Act [Texas Local Government Code, Title 7, Chapter 791]. The Act allows local governments and certain non-profits to contract or agree under the terms of the Act to make purchases or provide purchasing services and other administrative functions appropriately established by another government entity. The Interlocal Contract (ILC) is the required legal document that establishes a link between the Customer (local governments and certain non-profits) and HGACBuy and gives the Customer access to HGACBuy contracts.

HGACBuy contracts are established based on the requirements of Texas Local Government Code, Chapter 252 and/or other applicable State of Texas or Federal procurement requirements. Products and services are contracted after having been subjected to either a competitive bid (ITB); competitive proposal (RFP); or Request for Qualification and Pre-Qualification (RFQ) depending on the category type.

Contracts are blanket type, usually for a term of two (2) or three (3) years. Use of HGACBuy for purchases by any Customer is strictly at the discretion of that entity. Customers issue purchase orders and pay the HGACBuy Contractor directly. The Customer also sends HGACBuy a copy of the purchase order and the Contractor is responsible for reporting the sale to HGACBuy as a contract requirement.

Objective/Purpose

The Cooperative Purchasing Program (HGACBuy) of the Houston-Galveston Area Council of Governments is soliciting offerings for the furnishing of products/services as described in this Solicitation. Texas Local Government Code (Title 7, Chapters 771 and 791) establishes the authority for H-GAC to provide cooperative contract products and services to Texas local governments and in other states if their statutes allow. With that authority, H-GAC makes varied categories of contracted products and services available.

[Additional Resources and Forms](#)

- Required Forms – <https://www.hgacbuy.org/bid-notices/solicitation-forms-resources>
- HGACBuy Website – www.hgacbuy.org
- HGACBuy Open Solicitations – www.hgacbuy.org/bid-notices
- HGACBuy Sample Contract – <https://www.hgacbuy.org/bid-notices/solicitation-forms-resources>
- HGACBuy Customer and Contractor Handbook - <https://www.hgacbuy.org/bid-notices/solicitation-forms-resources>

Note: Sample Contract and Handbook are reference material only, do not constitute a contract, or become incorporated as requirements of this Solicitation. Only information supplied in this Solicitation or by a Letter of Clarification posted to the HGACBuy website should be used in the preparation of a submission.

[Contract Term](#)

H-GAC intends to award one or more contracts for the products/services requested under this Solicitation. The term of the resulting contract(s) contract will be for a period of two (2) year and until any outstanding orders against the contract have been fulfilled. H-GAC may, at its option, extend the contract for up to one (1) additional one-year term. H-GAC reserves the right to extend and/or expand the scope of the contract if deemed to be in the best interest of H-GAC and subject to H-GAC Board of Directors approval.

[No Guarantee of Usage](#)

H-GAC makes no guarantee of volume or usage under any contract resulting from this Solicitation. Services will be requested and contracted on an as needed basis and the type and value of each assignment will vary.

[Multiple Awards](#)

H-GAC reserves the right to award contract(s) for line items or groups of line items, at its sole discretion. H-GAC will not make separate awards for sales in Texas and for sales outside the state of Texas. In the case of acquisitions governed by the Motor Vehicle Division, the dealer is awarded the contract in Texas, and the Manufacturer is awarded the contract outside of Texas.

[Sample Contract](#)

A sample contract is available to view at <https://www.hgacbuy.org/bid-notices/solicitation-forms-resources> which the successful Respondent will be expected to sign. The actual final contract will be the same or nearly the same as the sample, however H-GAC reserves the right to update the actual contract as required for program or regulation requirements. NOTE: Successful Respondents MAY NOT process any purchase orders for sales until all contract documents have been completely executed.

[Post Award Meeting](#)

H-GAC reserves the right to require the awarded Contractor attend a post award meeting with H-GAC staff and/or other designated persons at H-GAC offices in Houston, Texas within thirty (30) calendar days after the award. The purpose of the meeting will be to discuss the terms and conditions and to provide additional information regarding the work tasks and requirements.

Solicitation Requirements

Respondent must be compliant with all licensing, permitting, registration or other applicable legal or regulatory requirements imposed by any governmental authority. It is Respondent's responsibility to ensure that this requirement is met. H-GAC reserves the right to request copies of any license, permit, or other compliance related documentation at any time. Listed below are other requirements of responding to the Solicitation:

A. Contractor Orientation and 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 Customer satisfaction. The Contact Person listed on Contractor Status and Contact Form or an alternate, will be required to participate in an H-GAC Contractor orientation and training as soon as possible after contract execution. In addition, other 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 determined by H-GAC and Contractor to be the most efficient and effective form of delivery. Please visit <https://www.hgacbuy.org/events> for more information.

B. Nationwide Sales Opportunity

HGACBuy contracts provide various products and services to local governments and qualifying non-profits throughout the nation, and desires to make established contracts available to Customers wherever and whenever practicable. Once a contract is executed, Contractor is expected to expand the scope of its marketing effort to include sales to Customers in all areas of the United States. Please also view important guidelines and additional information regarding marketing the program at: <https://www.hgacbuy.org/marketing>

C. Corporate/Sales Commitment

Contractor is required to make some basic commitments to ensure the overall success of the HGACBuy program. By submission of a response, Respondent agrees that HGACBuy has the support of senior management and HGACBuy will be the primary government contracting vehicle when offering services/products awarded from this solicitation to eligible Customers nationwide. A further commitment to aggressively market the program, both independently as well in partnership with HGACBuy.

D. Manufacturer as Respondent

If Respondent is a manufacturer or wholesale distributor, the response received will be evaluated based on a response made in conjunction with that manufacturer's authorized dealer/reseller network. Unless stated otherwise, a manufacturer or wholesale distributor Respondent is assumed to have a documented relationship with their dealer/reseller network where that network is informed of, and authorized to accept, purchase orders pursuant to any Contract resulting from this Solicitation on behalf of the manufacturer or wholesale distributor Respondent. Any listed dealer/reseller will be considered a sub-contractor of the Respondent. The relationship between the manufacturer and wholesale distributor Respondent and its dealer/reseller network must be indicated at the time of the submission.

E. Dealer/Reseller as Respondent

If Respondent is a dealer/reseller of the products/services proposed, the response will be evaluated based on the Respondent's authorization to provide those products and services from the manufacturer.

F. Approval by Manufacturer

Any awarded contractor must be approved by the manufacturer to sell, install, and service the brand of equipment submitted. Respondents to this solicitation must submit an approval letter from each manufacturer; authorization letters must include the regions in which equipment may be sold or serviced.

G. 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 be limited by law to selling through independent dealerships, etc. H-GAC's objective is to ensure that Customers, no matter where located, can buy contracted products/services and receive quality and timely service and support, while allowing for the most appropriate and effective response to this Solicitation. Responses to this Solicitation will only be accepted in conformance with the below scenarios and requirements. **Note: Respondent can only be a party to one response structure.**

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

Respondent must complete and sign a Signature Page and all other required forms and, if contracted, will be solely responsible for all contractual requirements including administration, processing of purchase orders and handling of payments for transactions which may involve other dealers/distributors who deliver the products or services. Unless stated otherwise, a manufacturer or wholesale distributor Respondent is assumed to have a documented relationship with their dealer network where that dealer network is informed of, and authorized to accept, purchase orders pursuant to any Contract resulting from this Solicitation on behalf of the manufacturer or wholesale distributor Respondent. Any listed dealer will be considered a sub-contractor of the Respondent. The use of any dealer or reseller is not required if manufacturer or distributor does not employ such.

B. *Multiple Respondents Acting Jointly:*

A single Response will be submitted, and each party to the Response must complete and sign a Signature Page and all other required forms must be included in the single Response. If the Response is successful, each party will sign a separate contract with H-GAC and will be individually responsible for compliance with all terms and conditions. Only those parties which have executed a contract with H-GAC are authorized to process purchase orders for sales and payments under the HGACBuy program.

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 sale, in certain limited circumstances, H-GAC may allow the contract to be assigned to a Manufacturer or another Dealer(s). Such assignment must be specific and detailed and must be approved by the Contractor and H-GAC. Once assigned, the Contractor and assignee may NOT sell or service the same product line or category.

Depending on the structure of the network, H-GAC recognizes in some cases it may be necessary for the Purchase Order to be issued in the name of the reseller/dealer, etc., however the reseller, dealer, etc. is recognized only as a sub-contractor and will not receive a separate contract award or be assigned any portion of the contract. Any Lead Respondent utilizing a dealer/reseller network who is awarded a contract will be responsible for the processing of the Purchase Order through the network and the activities of the sale, reporting requirements, and remittance of applicable order processing fees

H. Contractor Status

Contractor is required to provide a status form, which is not part of any evaluation, but may be relevant to other state or local procurement requirements that apply to HGACBuy Customers. The following information will need to be captured:

- a) Contractor's status as a minority/woman-owned business enterprise, historically underutilized business, or service-disabled veteran; etc.
- b) Whether Contractor or its ultimate parent or majority owner has its principal place of business in Texas or employs at least 500 persons in Texas; and
- c) Whether Respondent is a Texas resident or a non-resident business.

I. **Universal Identifier and System for Award Management**

In accordance with 2 CFR Title 2, Subtitle A, Chapter I, Part 25 as it applies to a Federal awarding agency's grants, cooperative agreements, loans, and other types of Federal financial assistance as defined in 2 CFR 25.406. Contractor understands and as it relates to 2 CFR 25.205(a), a Federal awarding agency may not make a Federal award or financial modification to an existing Federal award to an applicant or recipient until the entity has complied with the requirements described in 2 CFR 25.200 to provide a valid unique entity identifier and maintain an active SAM registration (www.SAM.gov) with current information (other than any requirement that is not applicable because the entity is exempted under § 25.110). 2 CFR 25.200(b) requires that registration in the SAM **prior to submitting an application or plan**; and maintain an active SAM registration with current information, including information on a recipient's immediate and highest level owner and subsidiaries, as well as on all predecessors that have been awarded a Federal contract or grant within the last three years, if applicable, at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency; and provide its unique entity identifier in each application or plan it submits to the Federal awarding agency. To remain registered in the SAM database after the initial registration, the applicant is required to review and update its information in the SAM database on an annual basis from the date of initial registration or subsequent updates to ensure it is current, accurate and complete. At the time a Federal awarding agency is ready to make a Federal award, if the intended recipient has not complied with an applicable requirement to provide a unique entity identifier or maintain an active SAM registration with current information, the Federal awarding agency: (1) May determine that the applicant is not qualified to receive a Federal award; and (2) May use that determination as a basis for making a Federal award to another applicant.

J. **Administrative Fee**

For each purchase order processed under an awarded contract, H GAC will directly invoice contractor a 1.5% Order Processing Charge applicable to the price of all equipment/services submitted in contractor's response. The Fee is calculated from awarded bid pricing before additional discounts (if any) have been applied. It is the contractor's responsibility to remit the administrative fee within thirty (30) days of processing any Customer purchase order, even if an invoice is not received from H-GAC. Contractor agrees that H-GAC will have the right, with reasonable notice, to inspect its records pertaining to purchase orders processed and the accuracy of the fees payable to H-GAC.

K. **HGACBuy General Purchasing Procedures**

1. Contracts are awarded through fair and open competition in compliance with applicable procurement rules and regulations.
2. The HGACBuy member sends a proposal request to an adequate number of Contractors in the desired Contract Category.
3. The Contractor prepares and sends a proposal/quote to the HGACBuy member based upon contracted pricing. The HGACBuy member conducts an evaluation of cost or price reasonableness, if the HGACBuy member is using \$250,000 (or current published Simplified Acquisition Threshold amount) or more of federal funds and an independent cost/price evaluation is necessary in accordance with the federal requirements of 2 CFR 200.
4. The Contractor and the HGACBuy member agree on a Purchase Order. Purchase Orders/Supplemental Contracts are reported and sent by individual HGACBuy members to the Contractor and to HGACBuy, where pricing is confirmed against the contract, an Order Confirmation is issued to the HGACBuy Member and copies of the Purchase Order/Supplemental Contract are logged and filed.
5. The Contractor delivers product(s)/service(s) directly to the HGACBuy member with a subsequent invoice the HGACBuy member upon completion of the work or delivery of the supplies.
6. The Contractor receives payment directly from HGACBuy member.
7. The Contractor reports and remits the administrative fee to HGACBuy.
8. Reference also HGACBuy Customer and Contractor Handbook - <https://www.hgacbuy.org/bid-notices/solicitation-forms-resources>

PART II – SPECIFICATIONS/SCOPE OF WORK

Project Background

H-GAC is soliciting Responses for selecting qualified service providers of Job Order Contracting Services to make these types of products and services available to Customers of the HGACBuy Cooperative Purchasing Program under blanket type contracts. This Invitation is meant to include a comprehensive pricing for job order contracting (“JOC”) services., which, upon award, would be made available to H-GAC local government members, nationwide. It is H-GAC objective to retain one or more experienced Contractor, ideally with demonstrable experience in local government JOC work. At H-GAC’s discretion, recommended awards may be for one or more Contractors, for those participants with nationwide service coverage and/or those with regional or in-state-only coverage.

“Job Order Contracting or JOC” is “a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work delivery is of a recurring nature but the delivery times, type and quantities or work required are indefinite (IDIQ).” TEX. GOV’T. CODE § 2269.401. JOC is negotiated by line-item delivery orders (job orders) based upon a contract’s priced coefficient applied to the line items in the unit price book. Once the line items are agreed to by the Contractor and H-GAC or the HGACBuy member, a lump-sum, firm fixed price contract for the negotiated Scope of Work exists. The product(s) and/or service(s) to be purchased under the awarded contract(s), if any, may be of indefinite delivery and indefinite quantity (IDIQ).

This is an indefinite quantity/indefinite delivery offerings contract – The HGACBuy Customer is responsible to ensure adequate competition is performed between the various contractors or contractors outside of HGACBuy to determine price reasonableness that might be required per any funding agency. Customer will need to ensure compliance with any funding agency requirements before proceeding with a purchase order under this contract. Please consult legal counsel regarding questions concerning compliance as a contractor under this solicitation.

Important Information

This Solicitation is being procured in accordance Texas Government Code (TGC) Chapter 2269, Contracting and Delivery Procedures for Construction Projects, specifically TGC 2269.401-451, Job Order Contracting Method, for use by HGACBuy members for job order contracting, including the maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature, but the delivery times, type, and quantities of work are indefinite. In no event can a job order issued as a result of this Solicitation be used in connection with a highway, road, street, bridge, utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction or a building or structure that is incidental to a project that is primarily a CIVIL ENGINEERING construction project. TEX. GOV’T CODE § 2269.402.

In compliance with TEX. GOV’T CODE § 2269.403(b), HGACBuy is establishing the maximum annual aggregate contract price for all contracts awarded under this Solicitation for the entire cooperative program at \$200 million. The governing body of an HGACBuy Customer that is a governmental entity must approve each job, task, or purchase order that exceeds \$500,000. TEX. GOV’T CODE § 2269.403(c).

Any Job Order issued pursuant to this Solicitation must be signed by the representative of the governmental entity/HGACBuy Customer’s representative that solicits the Job Order and the Contractor. TEX. GOV’T CODE § 2269.410(a). The Job Order may be (1) a fixed price, lump-sum quote based substantially on unit pricing applied to estimated quantities; or (2) a unit price job order based on the quantities and line items delivered. TEX. GOV’T CODE § 2269.410(b).

Use of Architect or Engineer. (a) If a job order contract or an order issued under the contract requires architectural or engineering services that constitute the practice of architecture within the meaning of Chapter [1051](#), Occupations Code, or the practice of engineering within the meaning of Chapter [1001](#), Occupations Code, the governmental entity shall select or designate an architect or engineer to prepare the construction documents for the project. TEX. GOV'T CODE § 2269.408. Engineering/Architectural Services: As connected to a given job through this contract, an H-GAC member may require engineering/architectural services (e.g. where complexity and/or a state or local venue dictates use of an engineer on infrastructure jobs). However, these services **are beyond the scope of this solicitation** and must be covered outside the sphere of the HGACBuy JOC contract. These services must be hired separately by the H-GAC Member in accordance with TEX. GOV'T CODE § 2254 or the Professional Services Procurement Act.

ID/IO Targeted Services

This solicitation seeks to establish a broad range of “as-needed”, indefinite delivery, indefinite quantity Job Order Contract (JOC) construction services from a licensed, experienced contractor(s) in the areas of **minor** construction/rehabilitation/renovation for a variety of HGACBuy Member properties as dictated by the specific needs of the HGACBuy member (and, as applicable, the architectural and engineering parameters as provided by Member), examples include, but are not limited to:

- Minor demolition/renovation
- site preparation/excavation
- concrete and slab work
- roofing
- plumbing
- drywall, trim and painting work
- HVAC and electrical
- Upgrades to ADA standards
- carpeting and other flooring
- facilities maintenance
- general routine repairs

Please refer to the Attached Appendix A – Customer and Contractor Job Order Contracting Guide for additional requirements and expectations for work ordered under this IDIQ contract. This Appendix will also be incorporated into the awarded HGACBuy Contract.

General Requirements

All Services/Products/Items priced and sold pursuant to this Solicitation must, as applicable:

- a. HGACBuy Contractors must furnish (and bill accordingly) all necessary materials/supplies, equipment, labor (in-house and if applicable, subcontractors), and project management oversight associated with the agreed upon services between Contractors and HGACBuy Members.
- b. Work is provided in accordance with the most current addition(s) of the applicable unit price book(s) or UPB and the published quarterly updates in accordance with TEX. GOV'T. CODE § 2269.404
- c. Contractor must assist the HGACBuy Member with deciding its individual needs
- d. Work performed conforms in quality and workmanship to the accepted standards of the industry.
- e. At minimum, Respondent should be available to provide services in the State of Texas.
- f. Respondent must be licensed in EACH state that services are proposed.
- g. Meet all applicable requirements of federal, state and local laws and regulations.
- h. Be manufacturer's normal offering with all standard features and functions and performance levels
- i. Include all standard and ordered optional equipment and be ready for operation on delivery

Labor Hours Definitions

The following definitions will apply to labor related services.

1. "Business Day" Monday through Friday
2. "Business Hours" Standard Business Hours 8 a.m. to 5 p.m.
3. "Regular Time" Work that occurs during standard business hours
4. "Emergency Time" Work that occurs outside standard business hours

Minimum General Requirements

Standard Equipment & Accessories

All products must be the manufacturer's complete standard equipment and accessories, with all basic features as shown in the manufacturer's printed literature, except as may be explicitly modified by these specifications, or by an H-GAC Member.

Installation:

Options submitted with response are assumed inclusive of standard installation. Respondent must indicate otherwise and include a fee for installation. The cost of installation must be included in the base system cost for all systems proposed, including all equipment, components and software. Basic installation means the system is fully operational. If additional installation is needed by Customer, the Contractor must list on their Form E, a Not to Exceed hourly rate by title or personnel qualification for hardware or software installation.

Warranty, Service, and Maintenance

Contractors must comply with the minimum warranty and maintenance requirements described below for any products or services provided under this Solicitation. The Warranty, Service and Maintenance including any Extended Maintenance Agreements, must be described in detail on the Form E.

1. Contractor must furnish with response and for all equipment sold through this H-GAC contract, the manufacturer's generator warranty, which must be honored by all the manufacturer's authorized service locations.

Final Contract Deliverables

Contractor agrees to submit written quarterly reports to H-GAC detailing all transactions during the previous three (3) month period. Reports must include, but are not limited, to the following information:

- Customer Name
- Product/Service purchased, including Product Code if applicable
- Customer Purchase Order Number
- Purchase Order Date
- Product/Service dollar amount
- HGACBuy Order Processing Charge amount

Reports must be provided to H-GAC in Excel or other acceptable electronic format by the 30th day of the month following the quarter being reported. If Contractor defaults in providing Products or Services reporting as required by the contract, recourse may be exercised through cancellation of the contract and other legal remedies as appropriate.

PART III –SUBMISSION CONTENTS

Submissions must include the information described below.

A. Summary Letter/Narrative Statement

This letter must include a summary of key aspects of the contractor's qualifications and must indicate the Respondent's commitment to provide the goods or services proposed and certify that all statements and information prepared and submitted in the response to this Solicitation are current, complete, and accurate; and that the proposed solution for the project meets all the requirements of this Solicitation. Also, include a narrative that provides detail regarding organization's experience (Maximum 1 page)

B. Signature Page and all Forms as Listed on last page of this Solicitation

Submit completed and signed Signature Page (located on page 2) and all required/applicable forms of the checklist provided on the last page of this solicitation. Submission will be deemed non-responsive and will not be considered for evaluation if the submission is not signed.

C. Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Affirmation Form (if subcontracts are to be let)

Complete and sign the applicable section (A, B, or C) of the Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Affirmation Form. Respondent must identify the small and minority businesses, women's business enterprises, and labor surplus area firms' participation level and the role that each small and minority business, women's business enterprises, and labor surplus area firm will have in the project implementation. Since small and minority businesses, women's business enterprises, and labor surplus area firms' proposed are considered part of the team, the Respondent must include all relevant information necessary to effectively perform the evaluation of the response as it relates to the submission requirements listed in this section. Nothing in this provision will be construed to require the utilization of any small and minority businesses, women's business enterprises, and labor surplus area firm that is either unqualified or unavailable. **The applicable section (A, B, or C) of this form must be completed, signed and returned with the submission, failure to return this signed form and any applicable required good faith effort documentation may result in the submission being deemed non-responsive.**

D. Proof of SAM.gov Registration (if not currently registered)

If Respondent is not currently listed with an Active Registration in the SAM.gov database (<https://sam.gov/content/status-tracker>), Respondent must supply documented proof of beginning the registration process. Please refer to the requirement contained in the Solicitation Part I – General Information - Universal Identifier and System for Award Management (SAM). Please visit <https://sam.gov/content/entity-registration> for more information. **Failure to supply proof that Respondent is actively pursuing the SAM.gov registration may result in the submission being deemed non-responsive.**

E. Geographic Areas Served Form

Submit information regarding at least the following on the form: Maps and graphics are useful (Be very specific as to geographic locations and capabilities).

1. Describe the company's Geographic Coverage and ability to meet the needs of HGACBuy Customers throughout the United States.
2. Provide a list of all states (or specific regions of each state) where products and services are being offered, as well as extent to which all or a portion of listed states' counties and municipalities are served.

F. Targeted Services/Capabilities/Capacity/References

Submit details, as applicable, regarding at least the following:

1. Detailed description of all services that will be provided and those not provided.
2. Provide qualifications of key staff and General Project managers assigned to the contract.
3. References for similar Services being provided to private customers/government for the last 5 years
4. Website presence and functionality available to End Users. Include any automated order entry process and/or billing and payment capability available on your website

G. Licenses/Certifications/Bonding

Provide any and all licenses and certificates as required by the Solicitation. Verification of the possession of a Contractor's license for each state (and as applicable, local venues (municipalities and counties) for which Respondent is offering JOC services. Provide verification of the ability to bond with an A.M. Best Rated Company "A" or better.

H. Safety Record/Litigation/Claims

Confirm that Respondent does not have any past or ongoing litigation or state or federal agency investigations, or OSHA safety citations, U.S. Department of Labor citations, or EPA citations with respect to government or private sector jobs – and if any past government or private sector projects resulted in arbitration (contested job completion or quality of work issues, et cetera). Please provide details where past instances have occurred or are in an ongoing status. Also, provide details on any bankruptcies, plus safety and insurance claims during the past five (5) years.

I. QA/QC

1. Detail the day-to-day QC processes and practices that serve to ensure safe, timely deliverables and site safety, and that facilitate an environment of improvement. Describe processes and practices related to corrective actions, policy compliance, and expectations/standards regarding subcontractors.
2. Describe the customer service department, including hours of operation, number of service centers, etc. Describe the involvement and amount of input of staff level employees in Contractor's quality training incentive and safety programs. Describe the procedures to monitor the quality of its customer service and materials.
3. Describe practices that will be in place that may serve to expedite quotes to HGACBuy members and track completion.
4. Describe Contractor's material support and service procedure. Detail the estimated timeframe from request to when the material or service is completed and the average percentage of on-time delivery.
5. Detail the number of materials Contractor stocks and the location.
6. Describe any quality awards or certificates achieved. Provide supporting documentation or background information.

J. Pricing – Unit Price Book/Software Estimating Tool – Attachment A – Fee Schedule

Pricing must take the form of a pricing discount coefficient which would be applied to the unit prices for **one or both** of the following (complete) labor and materials unit price databases (most current versions):

- (1) ***Gordian “2022 Facilities Construction Costs” Book***
- (2) ***Gordian “2022 Facilities Maintenance & Repair Costs” Book***

For example, a submitted coefficient of “1.1” designates final pricing against the specific RSMeans database standard pricing (e.g. on a \$10,000 project, normal hours, the final cost for the 1.1 coefficient is \$11,000). The lower the coefficient, the greater the discount/value to HGAC Members. Respondent must present a SINGLE coefficient for EACH of the following:

- (1) Normal working hours
- (2) Other-than-normal working hours
- (3) Non-pre-priced (non-Gordian database) items.

NOTE: Responses that do not include the required coefficient for each of the above parameters will be considered non-responsive and deemed non-compliant. Requirement: on non-pre-priced items, during the life of the contract, in order to best satisfy competitive pricing labor elements, state/local prevailing wages requirements shall be followed, where in effect.

Contractor must include as part of its coefficient those services that are required to obtain building permits and meet local and state standards for design and oversight. The coefficient should include the provision of reasonable oversight by Contractor. **The Contractor’s coefficient proposal must include all overhead items**, including but not limited to, vehicles and fuel, communication equipment, computers, printers, programs, insurance, transportation, maintenance, HGACBuy fee, and final site cleanup and all contingencies

Detail what elements, if any, in above pricing databases that it CANNOT cover (e.g., roofing, electrical plumbing, HVAC, etc.). In the absence of this detail, H-GAC will assume there is no such limitation. NOTE: If, during the open solicitation period, Gordian publishes one or more additional cost books that the Respondent can utilize and considers to be consistent with the scope of this solicitation, and a complement to the above price books, Respondent may also price it on Attachment A, including the required pricing coefficient.

During this contract period, Contractor must utilize (obtaining at Contractor’s expense), the **most current** Gordian *RSMeans* estimating software catalog package as identified by Respondent at time of Response as the specific *RS Means* catalog(s) applicable. During the life of the contract, Contractors must notify H-GAC when newer, updated versions are made public in the applicable *RS Means* database(s).

Additional Supplies and Services

Ensure that equipment, replacement parts, and labor fees typically associated with all Respondent offered services that are NOT priced within the *RS Means* catalog(s) are addressed. Additional pricing for supplies and services must be listed on Attachment A. Any travel associated expenses that may be incurred for additional offered services must be priced separately and cannot exceed current U.S. General Services Administration established rates. For more information please visit: <https://www.gsa.gov/travel-resources> (Maximum 1 page).

K. Business History, Viability, and Organizational Structure

Provide detailed information on Respondent’s history, practices, methodologies, and philosophies, demonstrating the ability to effectively support this contract and HGACBuy members’ needs; also provide organizational structure, and include key staff responsibilities.

L. Value Added Services and Practices

Submit detail outlining to what extent Respondent can demonstrate and document services or practices that may serve to elevate it beyond the average/minimum standards/other Respondents and foster an atmosphere of quality and high performance in its organization. This would include value-added services or practices (e.g. cost or savings, or quality enhancing innovations/solutions); safety programs: philosophies, methodologies, and resources in place for recognizing, controlling, and preventing safety incidents and minimizing claims on JOC projects.

PART IV –EVALUATION, SELECTION AND AWARD

Evaluation

An evaluation committee may consist of representatives from H-GAC and other stakeholders and will score the submission to the Solicitation in accordance with the evaluation criteria listed.

Submissions will be evaluated based on a total top score of 100. The committee members will individually evaluate and numerically score each submission in accordance with the evaluation criteria section of this Solicitation. Respondents with a score of at least 80 **may** be eligible for a contract award recommendation, at the sole discretion of H-GAC.

Selection

Upon review of all information provided by Respondents, the evaluation committee will rank each submission. H-GAC intends to select a submission that best meets the needs of H-GAC, and other stakeholders to be determined.

Levels/Award Tiers: Awards pursuant to this solicitation may be framed in terms of the lowest responsible Respondent providing the best value, for each offered line item. Awards for each line item/product code may consist of “tiered rankings”, with multiple contractors recognized for any given product code, based upon the total score, as described below:

1. Primary Response: represents the lowest responsible respondent providing the best value in terms of the associated evaluation scoring criteria
2. Secondary Response: represents the runner-up
3. Remaining Responses: remaining responses will be ranked similarly (i.e., 3rd, 4th, et cetera), with the total dictated by the number of successful responses.

It is the obligation of the HGACBuy Member to obtain pricing to determine best value with respect to their specific requirements and additional purchasing protocols, and to apply any additional levels of scrutiny when choosing an appropriate contractor.

Board Approval and Award

A recommendation will be presented to the H-GAC Board of Directors for approval to execute a contract. H-GAC reserves the right to award based on the best interests of H-GAC, whether that be single or multiple awards. However, the final approval and selection of award lies with the Board of Directors. H-GAC reserves the right to delay that date as needed and to reject any and all submissions as deemed in its interest.

Tie Bids

H-GAC may award a contract for tie bids by drawing lots or by awarding to multiple contractors. If time permits the bidders involved shall be given an opportunity to attend the drawing. The drawing must be witnessed by at least three (3) persons and the contract file must contain the names and addresses of the witnesses and the person supervising the drawing. When an award is made by drawing by lot after receipt of equal low bids, the buyer must describe how the tie was broken by providing a written statement that the contract award was made in accordance with the circumstances justifying the priority used to break the tie or select bids for a drawing by lot. This does not prohibit H-GAC from rejecting all bids.

Debriefing

Requests for a debriefing must be made in writing to HGACBuySolicitations@h-gac.com within five (5) working days after notification of non-selection. H-GAC reserves the right to not conduct debriefings if requests are made after that time. This procedure is NOT available to Respondents who did not participate in the selected Solicitation, to non-responsive or non-timely Respondents, or when all submissions are rejected.

Presentation/Demonstration/Interview

The evaluation committee reserves the right to request and require that each Respondent provide a final presentation/demonstration/interview regarding submission at a scheduled date and time. No Respondent is entitled to this opportunity, and no Respondent will be entitled to attend the presentation/demonstration/interview of any other Respondent. The purpose of the presentation/demonstration/interview is to inform the work of the evaluation committee. If necessary, Respondents may be required to make more than one presentation/demonstration/interview.

Best and Final Offer (BAFO)

H-GAC reserves the right to request a Best and Final Offer from finalist Respondent(s), if it deems such an approach necessary. In general, BAFO would consist of updated costs and answers to specific questions that were identified during the evaluation. If H-GAC chooses to invoke this option, Submissions would be re-evaluated by incorporating the information requested in the BAFO document, including costs, and answers to specific questions presented in the document. The specific format for the BAFO would be determined during evaluation discussions. Turnaround time for responding to a BAFO is usually brief (i.e., five (5) business days).

PART V – EVALUATION CRITERIA

Responsiveness (Pass/Fail)

Submission must be responsive to all material requirements that will enable the evaluation committee to evaluate submissions in accordance with the evaluation criteria to make a recommendation to H-GAC officials. This includes a signed signature page by a person authorized to bind the company to any contract/purchase order that may result from this Solicitation; and if subcontracting, may include the completed Small and Minority Business Affirmation Form. Proof of SAM.gov registration is provided.

Pricing (50%)

Pricing is complete and thorough, with specific consideration to proposed coefficient. All information is completed on the pricing sheets as set out in the submittal section of this solicitation, and all relevant costing detail are provided. If offering services, offer includes reasonable total fee schedule/not to exceed hourly rates.

Targeted Services (10%)

Detailed acceptable description is provided of all services that will be provided and those not provided. References for similar Services being provided to private customers/government for the last five (5) years and information on any website presence and functionality available to End Users and include any automated order entry process and/or billing and payment capability available on respondent website. Information on key staff and General Project Manager is provided and acceptable.

Safety Record/Litigation/Claims (10%)

Detailed information is provided and acceptable as it relates to safety records, Respondent does not have any past or ongoing litigation or state or federal agency investigations, or OSHA safety citations, U.S. Department of Labor citations, or EPA citations with respect to government or private sector jobs – and if any past government or private sector projects resulted in arbitration (contested job completion or quality of work issues, et cetera) information is provided where such instances have occurred or are in an ongoing status. Details are provided on any bankruptcies, plus safety and insurance claims with which Respondent has been involved during the past five years is declared.

QA/QC/Quality Assistance (10%)

The information requested is provided and is acceptable. Detailed descriptions and procedures and included and align to any provided documentation and/or supporting background information.

Value-Added Services and Practices (5%)

Acceptable overall qualifications of company as demonstrated in detailed narrative and qualifications statement. Demonstrated experience and effectiveness in providing like services for organizations. Demonstrated capability to provide the services outlined in the Solicitation; Minimum adequate references are submitted and required information is provided; relative licenses or registrations are provided, if applicable.

Business History, Viability, and Organizational Structure (5%)

Detailed acceptable information is provided on Respondent's history, practices, methodologies, and philosophies, demonstrating the ability to effectively support this contract and HGACBuy members' needs; Also, information is provided related to organizational structure, and includes key staff responsibilities.

Geographic Areas Served/Authorized Distributor (5%)

Detailed geographic coverage is provided and demonstrates the ability to meet the needs of Customers throughout the United States. A list of all states where products and services are being offered, as well as the extent to which all or a portion of the listed states' counties, municipalities are served. If applicable, dealer network (nationwide) is provided and describes how it will be used to promote this program and provide products/services to H-GAC members nationwide. Approval letter from each manufacturer is submitted (when applicable); authorization letters include the regions in which equipment may be sold or serviced. A listing of all planned retailers/distributors (if applicable), etc. that may be used during the term of this contract to deliver goods or services is provided.

Licenses/Certifications/Bonding (5%)

All licenses and certificates are satisfactory and are provided as required by the Solicitation. Verification is provided of the possession of a Contractor's license for each state (and as applicable, local venues (municipalities and counties) for which Respondent is offering JOC services. Verification is provided of the ability to bond with an A.M. Best Rated Company "A" or better

PART VI – INSTRUCTIONS TO RESPONDENTS

Pre-Proposal/Response Conference

A Pre-Proposal Conference will be held on **Tuesday, October 18, 2022 @ 2:00 p.m. CST**. The virtual meeting will be held using Zoom, registration is required. Once registered, applicants will receive notification and a direct link for participation. Click on the following link to register:

https://us06web.zoom.us/meeting/register/tZlufuGhqT0vHNOAUKVZqIMV_lrZUzH55J5A

It will be assumed that Respondents attending any conference have reviewed the Solicitation in detail and are prepared to raise any substantive questions which have not already been addressed by H-GAC in this Solicitation.

Inquiries and Additional Information

Respondents must submit questions by e-mail to HGACBuySolicitations@h-gac.com by the Questions deadline, any questions received after the deadline will not be answered. Telephone inquiries will not be accepted H-GAC will respond as completely as possible to each question. Questions and answers will be posted on the HGACBuy website <https://www.hgacbuy.org/bid-notices> as soon as available. The names of Respondents who submit questions will not be disclosed.

Letter(s) of Clarification

All clarifications to this Solicitation will be in writing and identified as a Letter of Clarification. Verbal communications and other written documents intended to clarify and interpret will not legally bind H-GAC. Only information supplied by a Letter of Clarification posted at <https://www.hgacbuy.org/bid-notices> should be used in preparing a response. **H-GAC does not assume responsibility for the receipt of any Letters of Clarification by Respondent(s). Respondents must periodically check the website for updates.**

Examination of Documents and Requirements

Each Respondent must carefully examine all Solicitation documents and become thoroughly familiar with all requirements prior to submission to ensure the response meets the intent of this Solicitation. Respondent is responsible for making all investigations and examinations that are necessary to ascertain conditions affecting the requirements and become thoroughly informed regarding any plan and/or infrastructure that may be required to support delivery of any Product or Service covered by this Solicitation. Failure to make such investigations and examinations will not relieve the Respondent from obligation to comply, in every detail, with all provisions and requirements of the Solicitation.

Modification of Submission (Before Deadline)

Respondents may modify submissions that have already been submitted by providing a written modification to H-GAC. However, no submissions may be modified after the deadline.

Non-Responders to Solicitation

If unable to submit a response, please email HGACBuySolicitations@h-gac.com and advise the reason.

PART VII – GENERAL TERMS AND CONDITIONS

By submitting a response, respondent agrees that it has read and fully intends to comply with the terms and conditions contained in this solicitation document as applicable to any subsequent contract or funding agency requirements or agreements. Exceptions to these Master Terms and Conditions are not permitted.

A. Contact by Respondent

To ensure a fair and competitive environment, direct communication between H-GAC employees other than the Solicitation Contact or any party able to create an unfair advantage to Respondent or disadvantage to other Respondents with respect to the Solicitation process, or the award of a Contract is strictly prohibited. This restricted period of communication begins on the issue date of the Solicitation and for Respondent(s) not selected for award ends with the conclusion of the protest period identified in the Solicitation document and for Respondents(s) selected for award ends with the Contract execution. This restriction does not apply to communications to other H-GAC employees during a Pre-Proposal/Bid or Response conference or other situations where the Solicitation Contact has expressly authorized direct communications with other staff. A Respondent who intentionally violates this requirement of the Solicitation process or otherwise deliberately or unintentionally benefits from such a violation by another party may have its Submission rejected in accordance with H-GAC Procurement Policy. Respondent(s) will not offer any gratuities, favors, or anything of monetary value to any official or employee of H-GAC (including any and all members of the evaluation committee) for the purposes of influencing consideration of any Submission.

B. Line-Item Bids

Only (1) one item can be bid for each referenced line item. To bid the referenced line item and an alternate, respondent must submit a separate bid form for each alternate item(s) with its own original signature page. Multiple bids for the same line item on one bid form may give cause to reject a bid from further consideration.

C. Percentage Discount from Catalog or Category

A specific percentage discount from a catalog or categories referenced may be bid as specified or Contractor may bid an alternate or approved equal catalog for the products/equipment. The bids received will be evaluated on Contractor's ability to meet or exceed specifications and most advantageous discount to the HGACBuy program. Cost plus a percentage of cost as a primary pricing mechanism is not acceptable.

D. Pricing Discrepancies

In case of discrepancies between total prices and unit prices; the latter will prevail.

E. Requirements Applicable to Physical Goods

In the case of physical goods (e.g., equipment, material, supplies, as opposed to services), all Products offered must comply with any applicable provisions of the Texas Business and Commerce Code, Title 1, Chapter 2 and with at least the following:

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

F. Samples

Samples, when required, must be submitted at no expense to H-GAC. If not destroyed or consumed during testing, samples will be returned upon request at Offeror's expense. Samples will be used to determine if the proposed items meet the specifications stated in the Solicitation. If Respondent fails to provide samples within five (5) day period, as required, H-GAC may reject the Response and not consider it for further evaluation.

G. Measurements

If any measurement stated for items are approximates. H-GAC reserves the right to accept items that are similar in size, if in H-GAC's judgment, the item offered fulfills the intended purpose.

H. Options – General

- a. Options are 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 must include any Manufacturer's/Dealer's code number. If no Manufacturer's/Dealer's code number exists, Respondent should create one.
- c. Prices for all offered options must include any installation or mounting required to make it a fully functional component of the Product, unless otherwise stated in the Response.
- d. "Suggested" or "Other" options may be listed for any Product in the Solicitation, Respondent 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.
- e. Respondent 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, Quantity or Special Discounts, Extended Training, etc.

Required Options

- a. Product specifications may include H-GAC "Required Options". If so, Respondent must quote a price for ALL options requested, and, if there is an H-GAC Option Code provided in the Solicitation, it MUST be used as part of the description.
- b. For any specific "Required Option", Respondent 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.

Upgrade/Downgrade Options

- a. H-GAC may include in the Solicitation the opportunity for a Contractor to provide items related to the “base item” being provided, termed Upgrade/Downgrade Options. These options allow Customers to customize their purchase to meet any required individual entity requirements. **Upgrade/Downgrade options are only available with the purchase of the matching “base item”.** H-GAC reviews all Purchase Order requests for Upgrade/Downgrade Options and reserves the right to disallow purchase of any Published Option through the Program.
- b. No Upgrade/Downgrade Option may be offered which essentially converts a Product such that it competes with a Product Item awarded to another Contractor.

I. Standard Features

The stated minimum requirements for all Products requested in the Solicitation are considered “standard” features by H-GAC; even if these features might normally be offered as options, these features must be included in the base price for any product offered.

J. Variances

Any variance in the specifications or performance of Products offered pursuant to this Solicitation will be deemed acceptable to H-GAC only if the variance MEETS or EXCEEDS the specifications and requirements of this Solicitation.

K. Interpretation of Specifications

The specifications and/or product references contained herein are intended to be descriptive rather than restrictive. H-GAC is soliciting responses to provide a complete service package which meets its overall requirements. Specific services and collection references may be included in this Solicitation for guidance, but they are not intended to preclude Respondents from recommending alternative solutions offering comparable or better performance or value. Results of informal meetings or discussions between a potential Respondent and H-GAC official or employee may not be used as a basis for deviations from the requirements contained in this Solicitation. The intent of the specifications is to provide Respondent with sufficient information concerning the Products/Services to be contracted so Respondent can prepare and submit an acceptable Response. The specifications may be detailed or general in nature. Details of construction, materials, or the way in which services will be provided, are left to the discretion of the Respondent, provided only that any offering must conform, as a minimum, to best Industry standards and practices and to what is currently being sold in the marketplace. Requirements contained in the Solicitation are not considered to be biased toward any Respondent(s) competing under this Solicitation.

L. Brand Name or Equivalent

Wherever in the specifications any materials or processes are indicated or specified by patent or proprietary name and/or by name of manufacturer, such specifications will be deemed to be used for the purpose of facilitating descriptions of the performance, materials and/or processes desired and must be deemed to be followed by the words, "or equivalent", if not stated in the specifications. The burden of proof will rest with the Respondent, in the course of a technical evaluation, to prove that the proposed item(s) are equivalent to the performance, materials, processes, or articles specified. Determination as to whether the items(s) bid is/are equivalent to those specified will rest solely with H-GAC and the Customer. If a respondent is offering an "or equivalent" item, respondent must list the manufacturer's name and product number of the item offered. If this detail is not provided, it will be assumed respondent is offering the exact item specified. H-GAC's decision whether an item is an equivalent to the item specified is final.

M. Updates to the Solicitation

Any changes, corrections, additions, or deletions made to this Solicitation will be posted to the HGACBuy website <https://www.hgacbuy.org/bid-notices>. It is the responsibility of Respondents to frequently check the website for any possible changes.

N. H-GAC Responsibilities

H-GAC is responsible for project administration and final decisions on all contractual matters. H-GAC has sole discretion and reserves the right to cancel this Solicitation or to reject any or all submissions received prior to the contract award. H-GAC reserves the right to waive any formalities concerning this Solicitation, or to reject any or all submissions or any part thereof.

O. Architecture and Engineering Services

The HGACBuy Cooperative Purchasing program is prohibited from offering Architecture and Engineering or other Independent testing services via a cooperative contract. Contractors may not offer any such services under and HGACBuy contract. Texas law requires Architectural and Engineering Services to be obtained in accordance with the Professional Services Procurement Act, Texas Local Government Code, Chapter 2254.

PART VIII – MASTER AGREEMENT GENERAL CONTRACT TERMS AND CONDITIONS

By submitting a response, respondent agrees that it has read and fully intends to comply with the terms and conditions contained in this solicitation document as applicable to any subsequent contract or funding agency requirements or agreements. Exceptions to these Master Terms and Conditions are not permitted.

P. H-GAC Terms and Conditions

1. H-GAC will not pay for any expenses incurred prior to the execution date of a contract, or any expenses incurred after the termination date of the contract.
2. Except as stated below, all materials submitted to H-GAC, including any attachments, appendices, or other information submitted as a part of a submission, are considered public information, and become the property of H-GAC upon submission and may be reprinted, published, or distributed in any manner by H-GAC according to open records laws, requirements of the US Department of Labor and the State of Texas, and H-GAC policies and procedures. In the event the respondent wishes to claim portions of the response are not subject to the Texas Public Information Act, it shall so indicate on the response; however, the determination of the Texas Attorney General as to whether such information must be disclosed upon a public request shall be binding on the respondent. H-GAC will request such a determination only if respondent bears all costs for preparation of the submission. H-GAC is not responsible for the return of creative examples of work submitted.
3. H-GAC will not be held accountable if material from submissions is obtained without the written consent of the contractor by parties other than H-GAC, at any time during the evaluation process.
4. Contract Termination:
 - a. *Convenience*

H-GAC may terminate this Contract in whole or in part without cause at any time by written notice by certified mail to the Contractor whenever for any reason H-GAC determines that such termination is in the best interest of H-GAC. Upon receipt of notice of termination, all services of the Contractor and its employees and subcontractors shall cease to the extent specified in the notice of termination.
 - b. *Default*

H-GAC may, by written notice of default to the Contractor, terminate the whole or any part of the Contract in any one of the following circumstances:

 - (1) If the Contractor fails to perform the services herein specified within the time specified herein or any extension thereof; or
 - (2) If the Contractor fails to perform any of the other provisions of this Contract for any reason whatsoever, or so fails to make progress or otherwise violates the Contract so that completion of the services herein specified within the agreement term is significantly endangered, and in either of these two instances Contractor does not cure such failure within a period of ten (10) days (or such longer period of time as may be authorized by H-GAC in writing) after receiving written notice by certified mail of default from H-GAC.

In the event of such termination, Contractor will notify H-GAC of any outstanding Purchase Orders and H-GAC will consult with the End User and notify the Contractor to what extent the End User wishes the Contractor to complete the Purchase Order. If Contractor is unable to do so, Contractor may be subject to a claim for damages from H-GAC and/or the End User.

Q. General Insurance

Unless otherwise stipulated in another section of this Solicitation, 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 Specifications of this Solicitation. **Property Damage or Destruction** insurance is required for coverage of Customer 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.

If any Product(s) or Service(s) will be provided by parties other than Respondent, all parties are required to carry the minimum insurance coverages specified, and if requested by H-GAC, a separate insurance certificate must be submitted for each such party. Coverage must be clearly listed on any insurance certificate(s) submitted to H-GAC. All insurance certificates, policies, and binders must be maintained by Respondent at its program site for review by H-GAC at any time, and a copy must be provided to H-GAC upon contract award. H-GAC reserves the right to contact insurance underwriters to confirm policy and certificate issuance and document accuracy.

R. Public Information Act

Respondent understands that H-GAC will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Respondent is required to make any information created or exchanged with H-GAC pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to H-GAC.

S. Contract Assignment

Respondent may not assign the contract or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, the contract without the prior written consent of H-GAC, and any attempted or purported assignment, transfer or delegation thereof without such consent shall be null and void.

T. Accommodation Compliance

In compliance with Americans with Disabilities Act, H-GAC will provide for reasonable accommodations for persons attending H-GAC activities. Requests must be received by H-GAC twenty-four (24) hours prior to the activity.

U. Applicability to Subcontractors

Respondent agrees that all contracts it awards pursuant to the contract awarded as a result of this procurement Solicitation will be bound by the foregoing terms and conditions.

V. False Statements

Respondent represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Response and any resulting contract.

W. Warranty and Copyright

Submissions must include all warranty information, including items covered, items excluded, duration, and renewability. Submissions must include proof of licensing if using third party code for programming.

X. Access and Protections of H-GAC Information Resources, Data, and Credentials

Contractor is responsible for, must protect, and shall provide adequate safeguards against any unauthorized use, modification, or disclosure of H-GAC information resources, data, and credentials. Contractor and subcontractors shall stay up to date and aware of current, ongoing, and potential telecommunications security risks in Contractor and subcontractors given environment(s) and must always consider information sensitivity and transmission security issues when selecting a communications medium. Contractor and subcontractors are required to utilize up-to-date and adequate anti-virus or malware protection software for all systems and devices used to access H-GAC information resources, data, and credentials. Contractor is responsible for any incident arising from improperly protected H-GAC information resources, data, and credentials.

Y. Information Resources Security Policy

Contractor shall maintain a written information security policy, which at minimum: 1) ensures that all employees and subcontractor's employees shall complete a cybersecurity training program certified under section 2054.5192 of the Texas Government Code. Such training must occur during the contract term and renewal period. Contractor shall provide H-GAC with verification of required training upon completion or H-GAC's request; 2) provides regular training of all employees and subcontractor's employees on applicable and up to date security procedures and techniques; 3) requires that contractor and subcontractors maintain privacy policies that protect private data as prescribed by applicable state, local, federal privacy laws and regulations; and, 4) requires that contractor and subcontractors utilize adequate safeguards to address any security vulnerabilities. Upon request, Contractor shall provide H-GAC with a copy of company and/or subcontractor's written information security policies.

Z. Security Breach

Contractor shall notify H-GAC within 24 (twenty-four) hours of Contractor's discovery of a security incident, breach, or unauthorized use, modification, or disclosure of H-GAC information resources, data, or credentials. Hereinafter, such an event will be referred to as a "security breach" in this section. Upon immediate discovery of security breach, Contractor will coordinate with H-GAC to determine and implement an adequate and timely action plan to mitigate security breach and resolve any issues resulting from security breach. Contractor shall bear all associated costs for any security breach caused by the negligence or willful misconduct of the Contractor and subcontractors.

AA. Contracting Information Responsibilities

If the contract is at least \$1 million, Respondent represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552 of the Government Code, may apply to the contract and the Respondent agrees that the contract can be terminated if the Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

BB. Compliance with Federal Law, Regulations, and Executive Orders

Contractor will comply will all applicable federal law, regulations, executive orders, policies, procedures, and directives.

CC. Anti-Competitive Behavior/Anti-Trust Affirmation

Respondent will not collude, in any manner, or engage in any practice, with any other Respondent(s) which may restrict or eliminate competition or otherwise restrain trade. Respondent also represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Response to any competitor or any other person engaged in the same line of business as Respondent.

DD. Financial Participation Prohibited

Pursuant to Section 2155.004(a) of the Texas Government Code, Respondent certifies that neither Respondent nor any person or entity represented by Respondent has received compensation from H-GAC to participate in the preparation of the specifications or solicitation on which this Response or contract is based. Under Section 2155.004(b) of the Texas Government Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated, and payment withheld if this certification is inaccurate.

EE. Suspension and Debarment

Debarment and Suspension (Executive Orders 12549 and 12689) – A contract award (2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1966 Comp. p. 189) and 12689 (3 CFR Part 1989 Comp. p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Respondent certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas and at all times during the term of the Contract neither it nor its principals will be debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas. Respondent shall immediately provide the written notice to H-GAC if at any time the Respondent learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. H-GAC may rely upon a certification of the Respondent that the Respondent is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless the H-GAC knows the certification is erroneous.

FF. Conflict of Interest

No officer, member or employee of the Contractor or Contractors subcontractor, no member of the governing body of the Contractor, and no other public officials of the Contractor who exercise any functions or responsibilities in the review or Contractor approval of this Master Agreement, shall participate in any decision relating to this Master Agreement which affects his or her personal interest, or shall have any personal or pecuniary interest, direct or indirect, in this Master Agreement.

- A. **Conflict of Interest Questionnaire:** Chapter 176 of the Texas Local Government Code requires contractors 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 and instructions are located on the H-GAC website or at the Texas Ethics Commission website <https://www.ethics.state.tx.us/forms/CIQ.pdf>. H-GAC officers include its Board of Directors and Executive Director, who are listed on this website. Respondent must complete and file a CIQ with the Texas Ethics Commission if an employment or business relationship with H-GAC office or an officer’s close family member as defined in the law exists.
- B. **Certificate of Interested Parties Form – Form 1295:** As required by Section 2252.908 of the Texas Government Code. H-GAC will not enter a Contract with Contractor unless (i) the Contractor submits a disclosure of interested parties form to H-GAC at the time the Contractor submits the contract H-GAC, or (ii) the Contractor is exempt from such requirement. The required form and instructions are located at the Texas Ethics Commission website https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. Respondents who are awarded a Contract must submit their Form 1295 with the signed Contract to H-GAC.

GG. Discrimination

Respondent and any potential subcontractors must comply with all Federal statutes relating to nondiscrimination. These include, but are not limited to:

- a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color, or national origin
- b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex
- c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps
- d) The Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101- 6107), which prohibits discrimination on the basis of age
- e) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse
- f) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism
- g) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records
- h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing
- i) Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) that may apply to the application.

HH. Equal Employment Opportunity

Respondent represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities. The equal opportunity clause provided under 41 CFR 60-1.4(b) is hereby incorporated by reference.

II. Drug-Free Workplace

Respondent represents and warrants that it shall comply with the applicable provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.) and maintain a drug-free work environment. H-GAC may request a copy of this policy upon contract award.

JJ. Copeland "Anti-Kickback" Act

The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into the contract. (2) The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as appropriate agency instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses. A breach of the contract clauses above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

KK. Byrd-Anti Lobbying Amendment

Contractors that apply or bid for an award exceeding \$100,000 must file the required anti-lobbying certification. Each tier must certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. As applicable, Respondent agrees to file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 USC 1352). Respondent certifies that it is currently in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) and will continue to compliant throughout the term of the Contract.

LL. Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Equipment (Effective Aug. 13, 2020 and as amended October 26, 2020)

Pursuant to 2 CFR 200.216, Contractor shall not offer equipment, services, or system that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. “Covered telecommunications equipment or services means 1) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); 2) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); 3) telecommunications or video surveillance services provided by such entities or using such equipment; or 4) telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. Respondent must comply with requirements for certifications. The provision at 48 C.F.R Section 52.204-26 requires that offerors review SAM prior to completing their required representations. This rule applies to all acquisitions, including acquisitions at or below the simplified acquisition threshold and to acquisitions of commercial items, including commercially available off the-shelf items.

MM. Buy America Requirement (Applies only to Federally Funded Highway and Transit Projects)

With respect to products purchased by H-GAC for use in federally funded highway projects, Contractor shall comply with all federal procurement laws and regulations with respect to such projects, including the Buy America provisions set forth in 23 U.S.C. Section 313, 23 C.F.R. Section 635.410, as amended, and the Steel and Iron Preference provisions of Texas Transportation Code Section 223.045, to the extent applicable. Contractor agrees to provide all certifications required by H-GAC regarding such programs. With respect to products purchased by H-GAC for use in federally funded transit projects, Contractor shall comply with all federal procurement laws and regulations with respect to such projects, including the Buy America provisions set forth in 49 U.S.C. Section 5323(j)(1), 49 C.F.R. Sections 661.6 or 661.12, to the extent applicable. Contractor agrees to provide all certifications required by H-GAC regarding such programs.

NN. Buy American Act (National School Lunch Program and Breakfast Programs)

With respect to products purchased by Customers for use in the National School Lunch Program and/or National School Breakfast Program, Contractor shall comply with all federal procurement laws and regulations with respect to such programs, including the Buy American provisions set forth in 7 C.F.R. Part 210.21(d), to the extent applicable. Contractor agrees to provide all certifications required by Customer regarding such programs. In the event Contractor or Contractor’s supplier(s) are unable or unwilling to certify compliance with the Buy American Provision, or the applicability of an exception to the Buy American provision, H-GAC Customers may decide not to purchase from Contractor. Additionally, H-GAC Customers may require country of origin on all products and invoices submitted for payment by Contractor, and Contractor agrees to comply with any such requirement.

OO. Domestic Preference

In accordance with 2 CFR 200.322, as appropriate and to the extent consistent with law, when using federal grant award funds H-GAC should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). H-GAC must include this requirement in all subawards including all contracts and purchase orders for work or products under the federal grant award. If Contractor intends to qualify for Purchase Orders using federal grant money, it shall work with H-GAC to provide all required certifications and other documentation needed to show compliance.

PP. Compliance with Energy Policy and Conservation Act

Respondent certifies that Respondent complies with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

QQ. Clean Air and Water Pollution Control Act and EPA Regulations

Contracts and subgrants of amounts more than \$150,000 must contain a provision that requires the Contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Pursuant to the Federal Rule above, Respondent certifies that it complies with all applicable provisions of the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) and will remain in compliance during the term of the Contract. Respondent certifies that Respondent complies with all applicable standards, orders, regulations, and/or requirements issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended (13 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15.

RR. Procurement of Recovered Materials

The Houston-Galveston Area Council and the Respondent must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include: (1) procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; (2) procuring solid waste management services in a manner that maximizes energy and resource recovery; and (3) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Pursuant to the Federal Rule above, as required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6962(c)(3)(A)(i)), Respondent certifies that the percentage of recovered materials content for EPA-designated items to be delivered or used in the performance of the Agreement will be at least the amount required by the applicable contract specifications or other contractual requirements.

SS. Profit as a Separate Element of Price

Purchases using federal funds for more than the current Simplified Acquisition Threshold of \$250,000, requires negotiation of profit as a separate element of the price. See, 2 CFR 200.324(b). Contractor agrees to provide information and negotiate regarding profit as a separate element of the price for the purchase. Contractor also agrees that the total price, including profit, charged by Contractor will not exceed the awarded pricing, including any applicable discount, under any awarded contract.

TT. Prevailing Wage

Respondent and any potential subcontractors have a duty to and shall pay the prevailing wage rate under the Davis Bacon Act, 40 U.S.C. 276a – 276a-5, as amended, and the regulations adopted thereunder contained in 29 C.F.R. pt. 1 and 5.

UU. Contract Work Hours and Safety Standards

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

VV. Inspection/Testing

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

WW. Background Checks

Cooperative customers may request background checks on any awarded contractor's employees who will have direct contact with students, or for any other reason they so choose, any may require contractor to pay the cost of obtaining any background information requested by the Customer.

XX. Goal for Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area firms (if subcontracts are to be let)

H-GAC's goal is to assure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible in providing services under a contract. In accordance with federal procurement requirements of 2 CFR §200.321, if subcontracts are to be let, the prime contractor must take the affirmative steps listed below:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
2. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources.
3. Dividing total requirements, when economically feasible, into smaller task or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
5. Using the services and assistance as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Nothing in this provision will be construed to require the utilization of any firm that is either unqualified or unavailable. The Small Business Administration (SBA) is the primary reference and database for information on requirements related to Federal Subcontracting <https://www.sba.gov/federal-contracting/contracting-guide/prime-subcontracting>

Contractor agrees to work with and assist HGACBuy customer in meeting any small and minority businesses, women's business enterprises, and labor surplus area firms targets and goals, as may be required by any rules, processes or programs they might have in place. Assistance may include compliance with reporting requirements, provision of documentation, consideration of Certified/Listed subcontractors, provision of documented evidence that an active participatory role for a small and minority businesses, women's business enterprises, and labor surplus area entity was considered in a procurement transaction, etc.

YY. Contract Price Adjustments**1. *Price Decreases***

If Contractor's Direct Cost decreases at any time during the full term of this award, Contractor must immediately pass the decrease on to H-GAC and lower its prices by the amount of the decrease in Direct Cost. (Direct Cost means Contractor's cost from the manufacturer of any item or if Contractor is the manufacturer, the cost of raw materials required to manufacture the item, plus costs of transportation from manufacturer to Contractor and Contractor to H-GAC. Contractor must notify H-GAC of price decreases in the same way as for price increases set out below. The price decrease shall become effective upon H-GAC's receipt of Contractor's notice. If Contractor routinely offers discounted contract pricing, H-GAC may request Contractor accept amended contract pricing equivalent to the routinely discounted pricing.

2. *Price Increase*

Contractors may request a price increase for items priced as Base Bid items and Published Options after twelve (12) months from the bid opening date of the bid received by H-GAC. The amount of any increase will not exceed actual documented increase in Contractor's Direct Cost and will not exceed 10% of the previous bid price. Considerations on the percentage limit will be given if the price increase is the result of increased tariff charges, or other economic factors.

3. *Price Changes*

Any permanent increase or decrease in offered pricing for a base contract item or published option is considered 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.

For published catalogs and price sheets as part of an H-GAC contract, requests to amend the contract to reflect any new published catalog or price sheet must be submitted whenever the manufacturer publishes a new document. The request must include the new catalog or price sheet. All Products shall, at time of sale, be equipped as required under any then current applicable local, state, and federal government requirements. If, during any contract, changes are made to any government requirements which cause a manufacturer's costs of production to increase, Contractor may increase 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 are the responsibility of the Customer.

4. *Requesting Price Increase/Required Documentation*

Contractor must submit a written notification at least thirty (30) calendar days prior to the requested effective date of the change, setting the amount of the increase, along with an itemized list of any increased prices, showing the Contractor's current price, revised price, the actual dollar difference and the percentage of the price increase by line item. Price change requests must include H-GAC Forms D Offered Item Pricing and E Options Pricing, or the documentation used to submit pricing in the original Response and be supported with substantive documentation (e.g., manufacturer's price increase notices, copies of invoices from suppliers, etc.) clearly showing that Contractor's actual costs have increased per the applicable line item bid. 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. This documentation should be submitted in Excel format to facilitate analysis and updating of the website. The letter and documentation must be sent to the Bids and Specifications assigned coordinator, Neal.Witty@h-gac.com

5. *Review/Approval of Requests*

If H-GAC approves the price increase, Contractor will be notified in writing; no price increase will be effective until Contractor receives this notice. If H-GAC does not approve Contractor's price increase, Contractor may terminate its performance upon sixty (60) days advance written notice to H-GAC, however Contractor must fulfill any outstanding Purchase Orders. Termination of performance is Contractor's only remedy if H-GAC does not approve the price increase. H-GAC reserves the right to accept or reject any price change request.

ZZ. Contract Item Changes

1. If a manufacturer discontinues a contracted item, that item will automatically be considered 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 lowest Respondent for the item, or take any other action deemed by H-GAC, at its sole discretion, to be in the best interests of its Customers.
2. If a manufacturer makes any kind of change in a contracted item which affects the contract price, Contractor must advise H-GAC of the details. H-GAC may allow or reject the change at its sole discretion. If the change is rejected, H-GAC will remove the item from its program and there will be no penalty to Contractor. However, H-GAC may at its sole discretion elect to make a contract award to the next lowest Respondent for the item, or take any other action deemed by H-GAC, at its sole discretion, to be in the best interests of its Customers.
3. 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. If the change is rejected H-GAC will remove the item from its program and there will be no penalty to Contractor. However, H-GAC may at its sole discretion elect to make a contract award to the next lowest Respondent for the item or may take any other action deemed by H-GAC at its sole discretion, to be in the best interests of its Customers.
4. 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 will 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.

AAA. Change Orders

Customers have the right to issue a change order to any purchase orders issued to the Contractor for the purposes of clarification or inclusion of additional specifications, qualifications, conditions, etc. The change order must be in writing and agreed upon by Contractor and the Customer agency prior to issuance of any Change Order. A copy of the Change Order must be provided by the Contractor to, and acknowledged by, H-GAC.

BBB. Distributors, Contractors, Resellers etc.

Contractor agrees and acknowledges that any such designations of distributors, Contractors, resellers or the like are for the convenience of the Contractor only and the awarded Contractor will remain responsible and liable for all obligations under the Contract and the performance of any designated distributor, Contractor, reseller, etc. Contractor is also responsible for receiving and processing any Customer purchase order in accordance with the Contract and forwarding of the Purchase Order to the designated distributor, Contractor, reseller, etc. to complete the sale or service. H-GAC reserves the right to reject any entity acting on the Contractor's behalf or refuse to add entities after a contract is awarded.

CCC. Tax Exempt Status

H-GAC and Customer members are either units of government or qualified non-profit agencies, and are generally exempt from Federal and State sales, excise or use taxes. Respondent must not include taxes in its Response. It is the responsibility of Contractor to determine the applicability of any taxes to an order and act accordingly. Exemption certificates will be provided upon request.

DDD. HGACBuy Order Processing Charge

H-GAC will apply an Order Processing Charge for each sale done through the H-GAC contract, with the exception of orders for motor vehicles. Any pricing submitted must include this charge amount per the most current H-GAC schedule. For motor vehicle orders, the Processing Charge is paid by the Customer.

EEE. Payment for Work

The H-GAC Customer is responsible for making payment to the Contractor upon delivery and acceptance of the goods or completion of the services and submission of the subsequent invoice.

FFF. Payment Terms/Pre-payment/Quantity Discounts

If discounts for accelerated payment, pre-payment, progress payment, or quantity discounts are offered, they must be clearly indicated in the submission. The applicability or acceptance of these terms is at the discretion of the Customer.

GGG. Restocking (Exchanges and Returns)

There will be no restocking charge to the Customer for return or exchange of any item purchased under the terms of any award. If the Customer wishes to return items purchased under an awarded contract, the Contractor agrees to exchange, these items for other items, with no additional charge incurred. Items must be returned to Contractor within thirty (30) days from date of delivery. If there is a difference in price in the items exchanged, the Contractor must notify H-GAC and invoice Customer for increase price or provide the Customer with a credit or refund for any decrease in price per Customer's preference. On items returned, a credit or cash refund will be issued by the Contractor to Customer. This return and exchange option will extend for thirty (30) days following the expiration of the term of the Contract. All items returned by the Customer must be unused and in the same merchantable condition as when received. Items that are special ordered may be returned only upon approval of the Contractor.

HHH. Out of Stock/Product Recalls/Discontinued Products

H-GAC does NOT purchase the Products sold pursuant to a Solicitation. Contractor is responsible for ensuring that notices and mailings, such as Out of Stock or Discontinued Notices, Safety Alerts, Safety Recall Notices and customer surveys, are sent directly to the Customer with a copy sent to H-GAC. Customer will have the option of accepting any equivalent product or canceling the item from Customer's Purchase Order. Contractor is not authorized to make substitutions without prior approval.

III. Deliveries/Shipping Terms

The Contractor agrees to make deliveries only upon receipt of authorized Customer Purchase Order acknowledged by H-GAC. Delivery made without such Purchase Order will be at Contractor's risk and will leave H-GAC the option of canceling any contract awarded to the Contractor. The Contractor must secure and deliver any item within five (5) working days or in conformance with any terms alternately established with the Customer. Shipping must be F.O.B. Destination to the delivery location designated on the Customer purchase order. The Contractor will retain title and control of all goods until delivery is completed and the Customer has accepted the delivery. All risk of transportation and all related charges are the responsibility of the Contractor. The Customer will notify the Contractor and H-GAC promptly of any damaged goods and will assist the Contractor in arranging for inspection. The Contractor must file all claims for visible or concealed damage. Unless otherwise stated in the Bid Form or Specifications, deliveries must consist only of new and unused merchandise.

JJJ. Manuals

Each product delivered under contract to any Customer must be delivered with at least one (1) copy of a safety and operating manual and any other technical or maintenance manual. The cost of the manual(s) must be included in the price for the Product offered.

KKK. Warranties, Sales and Service

Warranties must be the manufacturer's standard and inclusive of any other warranty requirements stated in the Solicitation; any warranties offered by a dealer will be in addition to the manufacturer's standard warranty and will not be a substitute for such. Pricing for any Product must be inclusive of the standard warranty. Contractor is responsible for the execution and effectiveness of all product warranty requests and any 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.

LLL. Resolution of Protested Solicitations and Awards

Any Respondent who is aggrieved in connection with a purchase transaction may file a grievance. The grievance may be filed at any phase of the procurement, and up to five (5) days after the H-GAC Board of Directors public agenda is posted for action regarding the questioned item. Grievances filed more than five (5) working days after action by the H-GAC Board of Directors will not be deemed timely and will not be considered. In order for a Respondent to enter the grievance process, a written complaint must be sent to the Deputy Assistant Director of H-GAC by certified mail and sent to 3555 Timmons Lane, Houston, Texas 77027, which includes 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 the 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 a valid grievance. Upon receipt of grievance, the Deputy Executive Director will initiate the informal resolution process.

The Procurement and Contracts Department will contact the complainant and all interested parties and attempt to resolve the allegations informally within ten (10) working days from the date of complaint. If the allegations are successfully resolved by mutual agreement, documentation will be forwarded to the Deputy Executive Director of the resolution with specifics on each point addressed in the original complaint.

If the Procurement and Contracts Department is not successful in resolving the allegations, the complaint, along with the comments, will be forwarded to the Deputy Executive Director immediately. The Deputy Executive Director will review all documentation. All interested parties will be given written notice of the date, time, and place of 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.

The complainant may appeal the Deputy Executive Director'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, will 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 will conduct a hearing and forward a summary and recommended resolution to the Executive Director.

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

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

PART IX – REQUIRED FORMS TO SUBMIT WITH RESPONSE

	Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Affirmation Form (if subcontracts are to be let)
	Signed Signature Page (located on Page 2)
	Contractor Status and Contact Form
	Attachment A – Fee Schedule
	Planned Authorized Retailers Distributors Dealers Form (as applicable)
	Geographic Areas Served Form

PART X – REQUIRED FORMS TO SUBMIT IF AWARDED A CONTRACT

	Certification Regarding Debarment, Suspension, and Ineligibility
	No Excluded Nation or Foreign Terrorist Organization Certification
	House Bill HB89 Verification Form
	(External Form) Conflict of Interest Form CIQ (if a conflict exists) (refer to link Part VIII, II)
	(External Form) Certificate of Interested Parties – Form 1295 (refer to link Part VIII, II)
	Certification Regarding Lobbying
	Copy of W-9

Download Forms: <https://www.hgacbuy.org/bid-notices/solicitation-forms-resources>

This Solicitation does not commit H-GAC to award a contract, issue a Purchase Order, or pay any costs incurred in the preparation of a submission to this Solicitation. The submission will become part of H-GAC’s official files without any obligation on H-GAC’s behalf. All Submission will be held confidential from all parties other than H-GAC, until after a contract is executed; then submissions become available as public records.

Appendix A - Member and Contractor Job Order Contracting Guide

Job Order Contract Ordering Process

The HGACBuy Member must obtain a Job Order Quote/Bid/Estimate request of the HGACBuy Contractor in writing. The Contractor may not refuse to perform any project requested by a Customer unless such project is unlawful. Upon notification of a pending request, the Contractor will make contact with the HGACBuy Member as soon as possible, but at least within two (2) business days. As projects are identified, the Contractor will participate in a joint scope meeting, at which time a Job Order Quote/Bid/Estimate request for the individual project(s) will be explained to the Contractor and the Contractor will be provided an opportunity to ask questions and inspect the site. If necessary or requested by the HGACBuy Member, Contractor will visit the HGACBuy Member's site and conduct a walk-through/project scoping with the HGACBuy Member's representative to define the Scope of Work. Contractor will perform due diligence to request and gather pertinent information, including existing conditions and HGACBuy Member documents, including, but not limited to, hazardous materials surveys and other relevant documents.

Conditions Affecting the Work

Contractor is responsible necessary and reasonable steps to ascertain the nature and location of the work and the general and local conditions that can affect the work or its costs. Any failure by the Contractor to take necessary and reasonable steps does not relieve the Contractor from responsibility for successfully performing the work without additional expense to the HGACBuy Member. Contractor must promptly, and before conditions are disturbed, give written notice to the HGACBuy Member of (1) subsurface or latent physical conditions at the site that differ materially from those indicated in the Purchase Order, Job Order, drawings, or specifications; or (2) unknown physical conditions at the site of an unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Purchase Order, Job Order, drawings, or specifications. By beginning any portion of the work, Contractor acknowledges satisfaction as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered to that extent this information is reasonably discoverable from an inspection of the site, including all exploratory work done by the HGACBuy Member, as well as from the drawings and specifications. The HGACBuy Member assumes no responsibility for any understandings or representations concerning conditions made by any of its officers or agents before execution of this Contract or a Purchase Order or Job Order unless such understanding or representations by the HGACBuy Member are expressly stated in the Purchase Order or Job Order.

Record "As Built" Drawings (if any)

Contractor will review all drawings furnished to Contractor immediately upon receipt and will promptly notify the HGACBuy Member of any discrepancy. Contractor shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors that may have been avoided by this means. Throughout the progress of the work, the Contractor must keep a master set of prints on the job site, on which is kept a complete, careful and neat record of all deviations from the drawings made during the course of the work. Any deviation from the drawings or specifications made by Contractor without prior written approval from the HGACBuy Member (or H-GAC, if the work is for H-GAC) will be at Contractor's own risk and expense.

Upon completion of construction, the "as built" prints must be certified as to their correctness by the signature of the Contractor and turned over to the architect/engineer of record for use in preparing a permanent set of "as built" drawings within thirty (30) calendar days after completion of construction. In addition to reproducible submissions, the Contractor should submit a CADD system (when requested) electronic file for "as built" documents prepared with a CADD system compatible with the HGACBuy Member's CADD system identified by the HGACBuy Member's representative. The HGACBuy Member reserves the right to review "as built" documents at any time. Costs associated with the preparation and completion of the "as built" drawings shall be part of the Contractor's multiplier.

Materials and Workmanship

Unless provided in a Purchase Order, Job Order or Supplemental Contract, all equipment and materials incorporated in the work must be new and of the most suitable grade for the purpose intended. Unless otherwise provided, reference to any equipment, material, or patented process by brand name, make, or catalog number establishes a standard of quality only. Contractor may substitute any equipment, material, or process that the HGACBuy Member finds to be equal. To obtain approval to use a different equipment, material, or process, the Contractor must furnish the HGACBuy Member with the manufacturer's name, the model number, and other identifying data and information regarding the capacity, nature, rating, and performance of the proposed substitute. If requested by the HGACBuy Member, samples must be submitted for approval at the Contractor's expense, shipping charges prepaid. Materials or processes substituted without approval may be rejected. Contractor shall be responsible for all materials delivered and work performed until completion and acceptance of the entire work by the HGACBuy Member, except for any completed unit of work which may have been previously accepted by the HGACBuy Member.

Contractor must obtain the HGACBuy Member's approval of the machinery and mechanical equipment incorporated into the work. Contractor must submit samples of all materials and equipment as directed by the HGACBuy Member or as required by the JOC. All work must be performed in a skillful and workmanlike manner. The HGACBuy Member may, in writing, require the Contractor remove from the work, any employee the HGACBuy Member deems incompetent, careless, or otherwise objectionable.

Associated Project Support Requirements

Contractor will remove movable desks and furniture in the work area and place those items back in the required location upon completion of the work. The purchase, delivery, and storage of project construction materials must not interfere with the HGACBuy Member's operations. Contractor must provide to its project offices, with minimal down time (24-hours service calls), a computer system with applicable software, including Microsoft Office, unaltered JOC project estimating software that is compatible with the most current utilized edition of RS Means.

Contractor is required to furnish and maintain a field office in an awarded region, at the Contractor's expense. Utilities and water at the job sites will be furnished to the Contractor at the HGACBuy Member's expense. Upon project completion, Contractor must remove the utility and water connections at the direction of the HGACBuy Member. Contractor is responsible for analyzing its electrical needs and the ability of HGACBuy Member to accommodate. Contractor must communicate and coordinate its utility and water requests to the HGACBuy Member. If additional capacity is required above and beyond the capacity that the HGACBuy Member can provide, Contractor is responsible for arranging the equipment, installation, and removal at Contractor's expense. If possible, toilet facilities will be made available by the HGACBuy Member, or the Contractor will arrange for portable toilet facilities.

1. The Contractor will prepare a Job Order Quote/Bid/Estimate for the project, including a price proposal (based on the bid coefficient applied to the Unit Price Book), schedule, written Scope of Work, including the UPB and the UPB's identifying line number and unit description, using an automated software system that will provide a line item estimate of the individual tasks, the quantities, the city cost index, Contractor's bid coefficient, and any applicable Pass Through cost additions, and additional items within the scope of this JOC and Contractor's response to the JOC. The line items taken from the UPB and the estimated quantities totaled will be modified with the application of the city cost index and the contractor's coefficient. Any adjustment factors from division one will be added to establish the final price as agreed to for the project. Cost adjustment factors, as allowed, must clearly identify those individual tasks (line items) applicable and include corresponding percentage. Each Job Order Quote/Bid/Estimate must be valid for a period of thirty (30) days unless an extension is agreed to by Contractor and the HGACBuy Member.

2. In preparing the Job Order Quote/Bid/Estimate, including estimating line items for a Job Order, the Contractor will not micro-estimate line items. Micro-estimating is the intentional breaking down of projects into their smallest components when a single line item or two would suffice. Example: the need to replace a door where a pre-hung door and frame would be the fastest and less costly route. Instead of the single line item defining the pre-hung door, the estimator breaks down this portion of the job into individual line items such as door frame, hinges and screws, which unnecessarily increases the cost to the HGACBuy Member. Evidence of micro-estimating will be evaluated during contract compliance audit/review.

EXAMPLE: Using sample figures from a Job Order Quote/Bid/Estimate, the total cost with all of the adjustments would be as follows:

Total of divisional line items based on the quantities and unit prices from the Unit Price Book, including the

OH&P column	\$500,000
City Cost Index: 0.91 adjusted	\$455,000
Bid Coefficient: 0.82 adjusted	\$373,000
Premium Hours: N/A	
Davis Bacon Act: N/A	
TOTAL COST (as adjusted):	\$373,000

When providing UPB costs as part of a Job Order Quote/Bid/Estimate, Contractor must adhere to the following:

- UPB's quotes/bids/estimates must use the current edition.
- All work proposed under the UPB method must use the UPB format, even if subcontractors are used to do the work. Subcontractor's invoices must align to the UPB spreadsheet.
- A line-item estimate must be submitted to substantiate the Job Order Quote/Bid/Estimate given to the HGACBuy Member. Contractors must ensure that the line-item estimates are expanded to show the full UPB number or enough of the description.
- Contractor's bid co-efficient, bonding and permit costs, and sales taxes, if applicable, must be shown as separate line items at the bottom of the UPB line-item estimate. This information may be handwritten or typed on the line-item estimate or may be shown on a separate summary sheet. The summary sheet must start with the line-item estimate total and show the detail for each of the items stated above.
- All change orders which list items covered by the UPB must be supported by a UPB line-item estimate.

Alternative Costing/Non-Pre-Priced Items

If a project/Job Order requires materials and/or services that are not covered by the UPB (i.e., Non- Pre-Priced Items), the Contractor may obtain three (3) written cost proposals from local providers. The Contractor must use the most advantageous cost proposal and may add its normal and customary markup and overhead provided as part of its response to obtain the retail cost. The stated HGACBuy discount will then be taken to arrive at the price. All materials and services falling under this category must be submitted in advance and approved by the HGACBuy Member prior to being included in any Job Order Quote/Bid/Estimate. If a material or service is required that must be custom designed and manufactured to meet an individual project site's conditions and/or provided for a unique application or project, the Contractor may provide three (3) or more written cost proposals or quotes from providers of such custom materials and services. Normal and customary markup and overhead may be added, and the HGACBuy designated discount taken. All materials and services falling in this category should be submitted in advance and approved by the HGACBuy Member prior to being included in any Job Order Quote. H-GAC and HGACBuy Members reserve the right to accept or reject any third-party cost proposals or quotes and/or proposed prices for Non-Pre-Priced Items provided by the Contractor. If a material or service is required as part of the performance of a Job Order under this JOC and can only be obtained and/or manufactured from a single source and falls under the sole source exception to procurement requirements, the offeror must provide the HGACBuy Member with the necessary documentation to substantiate the purchasing method.

H-GAC and/or the HGACBuy Member will review the Job Order Quote/Bid/Estimate and may request changes. Once an acceptable Job Order Quote/Bid/Estimate and Scope of Work have been agreed to, the HGACBuy Member may issue a PURCHASE ORDER and/or JOB ORDER for the project, which must be signed by Contractor and the HGACBuy Member as a lump sum fixed price contract. TEX. GOV'T. CODE § 2269.410(a) (“An order for a job or project under a job order contract must be signed by the governmental entity’s representative and the contractor.”). The governing body of each HGACBuy Member that is a governmental entity, as defined in Chapter 2269 of the Texas Government Code, must approve each job, task, or purchase order that exceeds \$500,000. TEX. GOV'T. CODE § 2269.403(c).

Prior to Contractor’s acceptance of any Job Order more than \$2,000,000, Contractor must submit the Job Order to H-GAC (if H-GAC is issuing the Job Order), or the HGACBuy Member (if the HGACBuy Member is issuing the Job Order), to determine whether the project is a qualified JOC project – that is, if the project constitutes maintenance, repair, alteration, renovation, remediation, or minor construction of a facility, the work is of a recurring nature but the delivery times are indefinite, and indefinite quantities and orders are awarded substantially on the basis of pre-described and pre-priced tasks, pursuant to TEX. GOV'T. CODE § 2269.403. The final determination of whether a particular project conforms to TEX. GOV'T. CODE § 2269.403 is made by H-GAC (if H-GAC is issuing the Job Order), or the HGACBuy Member issuing a Job Order.

The HGACBuy Member reserves the right to reject a Job Order Quote/Bid/Estimate or cancel a project for any reason. The Contractor will not recover any costs arising out of or related to the development of the Purchase Order/Job Order, including, but not limited to, the costs to review or prepare the Job Order Quote/Bid/Estimate. Contractor is required to ensure that the Purchase Order/Job Order includes the following, as applicable:

- The contract number, lump sum price, start date, schedule, and notice to proceed. The schedule will include the mobilization, materials purchase, installation and delivery, design, weather, and site cleanup and inspection. No additional claims may be made for delays because of these items.
- Each individual Purchase Order/Job Order may be limited to work at a single facility and will describe the Scope of Work to be performed. Descriptions may be written, by sketch, and/or by drawing and must include the location where work is to be performed, whether work may be performed during Regular Hours, the project completion time, and the price to be paid for the work.
- The date for commencing services and/or delivery of products (“work”). Upon commencing work, the Contractor will proceed diligently toward contract completion. Any delay in the work beyond the Contractor’s control must be reported to the HGACBuy Member’s authorized representative immediately.

Compensation for received products, terms of progress payments, and a schedule of payments

The HGACBuy Member retains the right to extend the schedule of work/delivery time or to suspend the work and to direct the Contractor to resume work when appropriate. The Purchase Order/Job Order must describe an equitable adjustment for added costs caused by any suspension. Any increases will be invoiced as allowed in the Contract.

- A schedule for performance of work that can be met without planned overtime, which will be Contractor’s responsibility.
- Monthly progress reports must be given to the HGACBuy Member by the Contractor. The specifics of what is reported should be described in the Purchase Order.
- Terms for acceptance by the HGACBuy Member and title to work must be clearly agreed upon and described. If any part of the work requires the HGACBuy Member to assume control prior to the completion, this must be defined. Contractor and the HGACBuy Member must agree on the definition of what constitutes final acceptance before payment of any retained compensation.
- Terms regarding retainage or a substitute security must be clearly agreed upon, detailed, and in compliance with applicable law.

No work shall be performed until a written Purchase Order/Job Order has been signed by the Contractor and the HGACBuy Member. Any work performed under a Purchase Order/Job Order before the Contractor’s receipt of the written Purchase Order/Job Order is at the Contractor’s risk.

The method of payment to the Contractor will be set forth in the Purchase Order/Job Order contract, and in any contract modification. The cost plus a percentage of cost and percentage of construction cost methods of payment must not be used.

Performance of the Purchase Order/Job Order

Daily during the progress of the work for a HGACBuy Member, the Contractor must remove and dispose of the resultant dirt and debris and keep the premises clean.

Quality Control

During performance of the Purchase Order or Job Order, the HGACBuy Member may secure samples, according to construction industry standards, guidelines, or industry standards, of materials being used from containers at the job site and submit them to an independent laboratory for comparison to specified material. In the event test results prove that a material is not equal to or better than specified, the Contractor will be responsible for the costs of the tests and all costs incurred to replace, remove and dispose of non-compliant materials. In the event test results provide that a material is equal to that specified, the Contractor will be notified of the results, and the HGACBuy Member will be responsible for the costs of the tests.

Completion of the Purchase Order/Job Order

The Contractor must perform the scope of work within the project completion time and for the fixed price of the Purchase Order/Job Order. The Contractor is required to perform all work under a Purchase Order/Job Order which has been issued and received before the expiration date of the HGACBuy contract. If the Purchase Order/Job Order is not received by the Contractor before the expiration date of this Contract, the Purchase Order will be considered cancelled. Any Purchase Order/Job Order issued during the Term of the Contract and not completed before the expiration date of the Contract must be completed within the completion/delivery time stated in the Purchase Order/Job Order, and the rights and obligations of the Contractor and the HGACBuy Member with respect to the Purchase Order/Job Order will be the same as if the Purchase Order/Job Order were completed during the Term of the Contract.

When the Purchase Order/Job Order has been completed, the Contractor must notify the HGACBuy Member, and the HGACBuy Member will inspect the work for acceptance under the scope and terms in the Purchase Order and/or Job Order. The HGACBuy Member will issue, in writing, any corrective actions/punch list items that are required, and Contractor must promptly complete all corrective actions/punch list items. Final payment of a Purchase Order or Job Order for which progress payments have been made will not be made until the project is totally completed (including punch list items), and the final application for payment is approved and signed by the HGACBuy Member, or other agreed arrangements as specified in the HGACBuy Member's Purchase Order/Job Order.

The Contractor will, upon completion of the work, remove all equipment and surplus materials (except materials or equipment that are to remain at the HGACBuy Member's property), and leave the premises in a clean, neat, and orderly condition satisfactory to the HGACBuy Member. Upon completion of the project, the Contractor must deliver to the HGACBuy Member all associated as-built drawings, warranties, and owner's manuals/instructions.