COOPERATIVE PURCHASING PROGRAM
Houston-Galveston Area Council of Governments
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INVITATION TO SUBMIT COMPETITIVE:	☐ **BIDS** ☒ **PROPOSALS**
INVITATION NO.: **AV11-20**	ISSUE DATE: **May 12, 2020**
CATEGORY: **STATEWIDE AUTOMATED VEHICLE PROCUREMENT**	

PURPOSE OF THIS INVITATION

The Cooperative Purchasing Program (HGACBuy) of the Houston-Galveston Area Council of Governments is soliciting offerings for the furnishing of products/services as described herein.

NOTE: Only responses submitted online will be accepted. Responses are scheduled to be formally "opened" by H-GAC on the date and time indicated in the table below. Any responses submitted later than 1:00 p.m. on the due date will be deemed non-responsive and rejected.

PROCUREMENT SCHEDULE & DETAILS

DRAFT SPECIFICATION / INVITATION:	March 3, 2020
PRE-BID/PROPOSAL CONFERENCE:	April 9, 2020 @ 9:00 a.m. CT; Conference Room B, 2nd floor
FINAL SPECIFICATION / INVITATION:	May 12, 2020
PROPOSAL RESPONSES DUE:	June 9, @ 1:00 p.m. CT; H-GAC Clock
PUBLIC RESPONSE OPENING:	June 9, @ 2:00 p.m. CT; H-GAC Clock
RECOMMENDATIONS TO BOARD:	September 15, 2020
CONTRACT START DATE & TERM:	November 1, 2020 – October 31, 2023 (3 years)
The documents comprising this Invitation are available via web download at: **https://www.hgacbuy.org/bids/**	
For assistance regarding this Invitation, please contact: Name: **Neal Witty** Phone: 713-499-6693 E-mail: **neal.witty@h-gac.com**	

CONTENTS OF THIS INVITATION

SECTION-A: General Terms & Conditions
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SECTION-A

GENERAL TERMS & CONDITIONS
FOR BIDS AND PROPOSALS

INVITATION NO. AV11-20
DESCRIPTION: Statewide Automated Vehicle Procurement

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1. INTRODUCTION

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

2. DEFINITIONS, ABBREVIATIONS & ACRONYMS

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

Definitions and Abbreviations:

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

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

Approved. Acceptable to the "authority having jurisdiction."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Must. A term indicating a mandatory requirement.

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

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

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

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

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

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

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

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

Quotation. See "Contract Pricing Worksheet".

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

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

Shall. A term indicating a mandatory requirement or action.

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

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

Acronyms:

ANSI = American **N**ational **S**tandards **I**nstitute

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

ASME = **A**merican **S**ociety of **M**echanical **E**ngineers
CFR = U.S. **C**ode of **F**ederal **R**egulations
DOJ = U.S. **D**epartment **O**f **J**ustice
DOT = U.S. **D**epartment **O**f **T**ransportation
EPA = U.S. **E**nvironmental **P**rotection **A**gency
FAA = **F**ederal **A**viation **A**dministration
FMVSS = U.S. **F**ederal **M**otor **V**ehicle **S**afety **S**tandards
H-GAC = **H**ouston-**G**alveston **A**rea **C**ouncil of Governments
IEEE = **I**nstitute of **E**lectrical and **E**lectronics **E**ngineers
MVD = **M**otor **V**ehicle **D**ivision of Texas Department of Transportation
NFPA = **N**ational **F**ire **P**rotection **A**ssociation
NHTSA = **N**ational **H**ighway **T**raffic **S**afety **A**dministration
NIOSH = **N**ational **I**nstitute **F**or **O**ccupational **S**afety And **H**ealth
NIST = **N**ational **I**nstitute of **S**tandards and **T**echnology
NTEA = **N**ational **T**ruck **E**quipment **A**ssociation
OSHA = U.S. **O**ccupational **S**afety and **H**ealth **A**dministration
RRC = **R**ail**r**oad **C**ommission of Texas
SAE = **S**ociety of **A**utomotive **E**ngineers
TBPC = **T**exas **B**uilding and **P**rocurement **C**ommission (formerly GSC)
TxDOT = **T**exas **D**epartment **O**f **T**ransportation
UL = **U**nderwriter's **L**aboratories Inc.
VTCS = **V**ernon's **T**exas **C**ivil **S**tatutes

3. NON-BINDING ORAL COMMENTS

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

4. STRUCTURE OF RESPONSE

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

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

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

B. Multiple Respondents Acting Jointly:

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

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

5. BASIC REQUIREMENTS & CONDITIONS

a. The final requirements and specifications contained herein may be different, perhaps materially, from those in the "Invitation To Attend Pre-Bid / Pre-Proposal Conference", if any. It is **Offeror**'s sole responsibility to

thoroughly examine and review all documentation associated with this Invitation, including any Addendums, to ensure that any response submitted complies in every respect with all requirements.

b. Any Addendum to this Invitation which may be required prior to the Response due date will be delivered to those prospective Offerors of record who have previously obtained a copy of this Invitation from **H-GAC**. Prospective Offerors shall be responsible for obtaining all documents relating to submission of a Response.

c. **Offeror** shall thoroughly examine any drawings, specifications, schedules, instructions and any other documents, supplied as a part of this Invitation, and is solely responsible for understanding and compliance.

d. **H-GAC** shall not be liable for **Offeror's** incomplete documentation, or for any costs associated with preparation and submission of any Response hereto. Additionally, all components of any Response become the property of **H-GAC, and shall be considered to be in the public domain**.

e. **Offeror** shall make all investigations necessary to become thoroughly informed regarding any plan and/or infrastructure that may be required to support delivery of any Product or Service covered by this Invitation. No plea of ignorance by **Offeror** stemming from failure to investigate conditions that may now or hereafter exist, shall be accepted as a basis for varying **H-GAC's** requirements**,** or **Offeror's/Contractor's** obligations or entitlements.

f. Requests for changes to the requirements or specifications herein must be in writing (e-mail, fax, letter) and must be received by **H-GAC** no later than fifteen (15) calendar days prior to the Response Due Date. **H-GAC** will review such requests, but may or may not make changes at its sole discretion. Changes, if any, will only be made by written Addendum sent to addressees of record. In any event, it is **Offeror's** sole responsibility to insure that any and all Addendums which may have been issued have been received and addressed.

g. <u>By submission of a response, **Offeror** expressly understands and agrees that all terms and conditions herein will be part of any subsequent contract that is executed pursuant to this Invitation.</u>

h. **Offeror** is advised that all **H-GAC** contracts are subject to the legal requirements established in any applicable Local, State or Federal statute.

i. **Offeror/Contractor** must be in compliance with all licensing, permitting, registration and other applicable legal or regulatory requirements imposed by any governmental authority having jurisdiction. It is **Offeror/Contractor's** responsibility to insure that this requirement is met, and to supply to **H-GAC** upon request, copies of any license, permit or other documentation bearing on such compliance.

j. Unless otherwise established elsewhere in this Invitation, NO minimum purchase quantities or spending levels are provided or guaranteed by **H-GAC** or any **End User**.

k. This Invitation is not meant to restrict competition, but rather is intended to allow for a wide range of responses.

l. Responses which are 'qualified' with conditional clauses or alterations of or exceptions to any of the terms and conditions in this Invitation may be deemed non-compliant at **H-GAC**'s sole discretion.

m. The term '**Offeror**', or derivative thereof, shall become synonymous with '**Contractor**' for any successful **Offeror** recommended for a contract pursuant to this Invitation.

n. **H-GAC** reserves the right to:

- Reject any and all offers received in response to this Invitation.
- Reject any part of an offer received in response to this Invitation.
- Determine the correct price and/or terminology in the event of any discrepancies in any response.
- Accept a response from, and enter into agreement with, other than the lowest price **Offeror**.
- Accept responses and award contracts to as many or as few **Offeror**s as **H-GAC** may select.
- Amend, waive, modify, or withdraw (in part or in whole) this Invitation, or any requirements herein.
- Hold discussions with **Offeror**s, although award may be made without discussion.
- Request an **Offeror** to give a presentation of the Response at a time and place scheduled by **H-GAC**.
- Exercise any of these rights at any time without liability to any **Offeror**.

o. **H-GAC** reserves the right to determine that conditions exist which prevent the public opening of responses on the date and at the time advertised, and to reschedule the public opening for a future date and time. Responses received by **H-GAC** by the original deadline will be secured unopened until the rescheduled opening date and time, and those having timely submitted such responses will be notified.

6. OFFEROR'S AUTHORIZED SIGNATORY

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

7. SURETY FOR INSURANCE

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

8. CONFIDENTIAL / PROPRIETARY MATERIALS

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

9. REFERENCES

a. **Offeror** shall list the names of at least five government agencies within the continental United States which have purchased from **Offeror** products or services similar to those covered by this Invitation, within the last two years. **H-GAC** reserves the right to determine if such products or services are appropriately similar.

b. **Offeror** may provide reference information in whatever format desired, but each should include the following specific information:

- Agency name
- Contact person name
- Address
- Phone & Fax numbers
- Description of product(s) or service(s) and date sold

c. Other information, including criticism however learned, may be used by **H-GAC** in evaluation of responses.

10. INSURANCE

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

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

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

Property Damage or Destruction insurance is required for coverage of **End User** owned equipment while in **Contractor**'s possession, custody or control. The minimum Single Occurrence limit is $500,000.00 and the General Aggregate limit must be at least two times the Single Occurrence limit. This insurance may be carried in several ways, e.g. under an Inland Marine policy, as part of Automobile coverage, or under a Garage Keepers policy. In any event, this coverage must be specifically and clearly listed on insurance certificate(s) submitted to **H-GAC**.

b. Insurance coverage shall be in effect for the length of any contract made pursuant to this Invitation, and for any extensions thereof, plus the number of days/months required to *deliver* any outstanding order after the close of the contract period.

c. Original Insurance Certificates must be furnished to **H-GAC** on request, showing **Offeror/Contractor** as the insured and showing coverage and limits for the insurances listed above.

d. If any Product(s) or Service(s) will be provided by parties other than **Offeror/Contractor**, all such parties are required to carry the minimum insurance coverages specified herein, and if requested by **H-GAC**, a separate insurance certificate must be submitted for each such party.

e. **H-GAC** reserves the right to contact insurance underwriters to confirm policy and certificate issuance and document accuracy.

11. OFFEROR CERTIFICATIONS

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

Non-Collusive Response

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

b. The prices which have been quoted in the Response (unless otherwise required by law), have not been knowingly disclosed by **Offeror** and will not be knowingly disclosed by **Offeror** prior to the public response opening, either directly or indirectly, to any other **Offeror** or competitor.

c. No attempt has been made or will be made by **Offeror** to induce any other person, partnership or corporation to submit or not to submit a response for the purpose of restricting competition.

Non-Biased Specifications

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

No Financial Interest or Other Conflict

a. No **H-GAC** officer, employee, Board of Directors member or member of any **H-GAC** board or commission, nor family member of any such person, has a financial interest, direct or indirect, in **Offeror** or in any contract **Offeror** might enter into with **H-GAC**.

b. No economic or employment opportunity, gift, loan, gratuity, special discount, trip, favor or service has been, or will be, offered or given to any officer, employee, Board of Directors member, or member of any **H-GAC** board or commission, nor to any family member of any such person.

Debarment and Suspension Status

a. **Offeror** is not currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any government agency, nor is **Offeror** an agent of any person or entity that is currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transaction by any government agency.

b. **Offeror** has not within a three year period preceding this Invitation been convicted of or had a civil suit judgement rendered against **Offeror** for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property.

c. **Offeror** is not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated above.

d. Offeror has not, within a three-year period preceding this Invitation, had any government (federal, state, or local) transactions terminated for cause or default.

Insurance Coverages

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

Licensing & Permits

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

12. HISTORICALLY UNDERUTILIZED BUSINESS (HUB) PARTICIPATION

a. To satisfy Texas' statutory requirements [Government Code, Chapter 2161, Subchapter D], **H-GAC** requires all **Offeror**s to supply information in any bid/proposal response listing (1) the total number of subcontracts and (2) the total number of HUB contracts applicable to the Products or Services offered in the response. Local

governments often require this information for their own reporting requirements prior to placing orders through the **H-GAC** Cooperative Purchasing Program.

b. **Offeror** must complete **Form B** and include subcontracts with HUB's that provide any materials or services related to sales that may be made thru **H-GAC**'s Cooperative Purchasing Program.

13. NON-RESIDENT RECIPROCAL SALES ACT

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

14. TEXAS MOTOR VEHICLE COMMISSION CODE & LICENSING

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

> **NOTE:** In accordance with the Texas Motor Vehicle Commission Code, contracts for motor vehicles to be sold within the state of Texas may be made **ONLY** with properly licensed Texas Motor Vehicle Dealers. Therefore, to be considered for a contract covering Texas End Users, the Response must include a **Form A** from a licensed Texas Motor Vehicle Dealer

15. INTENT AND SCOPE OF SPECIFICATIONS

a. The intent of the specifications herein is to provide **Offeror** with sufficient information concerning the Products/Services to be contracted such that **Offeror** can prepare and submit an acceptable Response.

b. The specifications may be detailed or general in nature with regard to any particular Product/Service. Where not otherwise specified, details of construction, materials, or the way in which services will be provided, are left to the discretion of the **Offeror**, provided only that any offering shall conform, as a minimum, to best Industry standards and practices and to what is currently being sold in the marketplace.

c. Responses shall be considered only from **Offerors** that have established good reputations in their markets, and who furnish satisfactory evidence of ability to supply the Products/Services specified herein.

d. **Offeror** shall show proof of ability to provide to **End User**s prompt and competent service, including parts if applicable, for all Products/Services covered by this Invitation, by proper completion of a Service Organization Document as described elsewhere herein.

16. REQUIREMENTS APPLICABLE TO PHYSICAL GOODS

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

a. Be new, unused, and not refurbished.

b. Not be a prototype insofar as the general design, operation and performance. This requirement is NOT meant to preclude **Offeror** from offering new models or configurations which incorporate improvements in a current design or add functionality, but which in such new model or configuration may be new to the marketplace.

c. Include any and all accessories which may or may not be specifically mentioned herein, but which are normally furnished or which are necessary to make a delivered Product ready for its intended use. Such accessories shall be assembled, installed and adjusted such that the Product is ready for continuous operation at time of delivery.

d. Have assemblies, sub-assemblies and component parts that are standard and interchangeable throughout the entire quantity of a particular Product as may be purchased simultaneously by any individual **End User**.

a. Be designed and constructed using current industry accepted engineering and safety practices, and materials.

b. Be available for inspection at any time prior to or after procurement.

17. PRODUCT CODES

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

a. Each Product/Service offered shall be uniquely identified using an **H-GAC** Product Code, which shall be determined as described in Section B of this Invitation. **Offeror** shall offer ONLY ONE Product for any particular Product Code. For example, **Offeror** may wish to submit a bid for Product Code ABC and may have another offering that also meets the requirements for ABC. **Offeror** MAY NOT submit two offerings for ABC. The alternate offering that also meets the requirements for ABC must be offered as an option "upgrade/downgrade" to ABC on **Form E**.

b. Pricing for optional upgrades or downgrades to base bid items should be quoted as an "adder" or "deduct" amount as appropriate, to be applied to the offered price of the base Product Item listed on **Form D**.

c. Base bid items and their associated HGACBuy Product Codes are included in the Section B and/or on **Form D**.

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

18. SPECIFIC DESCRIPTIVE REFERENCES

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

19. MANUALS

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

20. STANDARD FEATURES & OPTIONS

The following requirements are applicable primarily to physical goods.

Standard Features

a. The stated minimum requirements for all Products listed herein include what **H-GAC** considers to be "standard" features. Even though such features might normally be offered as options rather than as standard, they are nonetheless considered to be standard in this Invitation, and must be included in the base price for any Product offered. Such features **SHOULD NOT** be offered as options except as deducts for their omission from the base Product.

b. If it is unclear in the Response that an **H-GAC** standard feature is included in the base price, it will be assumed that such is the case. If awarded a contract **Offeror** will be expected to sell the Product with all **H-GAC** specified standard features included in the base price.

c. Any feature or accessory normally offered by manufacturer as "standard" shall be considered a standard feature and shall be included in the base price of any offering, even though not specifically listed as a requirement in **H-GAC**'s specifications. Such features **SHOULD NOT** be offered as options except as deducts for their omission from the base Product.

Options - General

a. Options are considered to be any features or accessories, other than **H-GAC**'s and Manufacturer's "standard" features or accessories.

b. Options should be offered on the *FORMS* designated for quoting options. Each option should be listed and described on a separate line, and should include any Manufacturer's/Dealer's code number. If no Manufacturer's/Dealer's code number exists, **Offeror** should create one.

c. Prices for all offered options shall be assumed to include any installation or mounting required to make it a fully functional component of the Product, unless otherwise stated in **Offeror's** response.

Required Options

a. Product specifications in this Invitation may include **H-GAC** "Required Options". If so, **Offeror** must quote a price for ALL such options, and, if there is an **H-GAC** Option Code provided in this Invitation for such options, it MUST be used as part of the description.

b. For any specific "Required Option", **Offeror** may quote an equivalent so long as its design and performance are as good as, or better than, the specified option item. Responses which do not include pricing for Required Options may be considered non-compliant.

Other Options

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

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

Published & Unpublished Options

a. H-GAC Cooperative Purchasing Program (Program) contracts are awarded through a public competitive bid or proposal (RFP) process. Further to that process, Program policy considers an 'option' listed and priced in a bid or RFP Response: (1) To be a "**Published Option**"; (2) To be part of any awarded contract; and (3) To be available for purchase by Program members separately and independently from associated base line items. However, since Published Options may have not been subjected to the same scrutiny as the associated base line items, it cannot be concluded they were directly competed. Therefore, pursuant to Local Government Code 252.021(a), purchase of a published option costing more than $50,000 shall not be allowed. Furthermore, **H-GAC** reserves the right at its sole discretion to disallow purchase of any Published Option through the Program if deemed contrary to the intent of the law.

b. Any option that has not been listed and priced in the Response is considered to be an "**Unpublished Option**"**.** Unpublished Options may be sold, but only in connection with the sale of a base Product Item, and only insofar as the total cost of all Unpublished Options remains below twenty five percent (25%) of the total summed cost of the base Product(s) plus any Published Options.

c. No Published or Unpublished Option may be sold which essentially converts a Product such that it competes with a Product Item awarded to another contractor.

21. WARRANTIES, SALES & SERVICE

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

a. Offeror must be a properly franchised dealer authorized to sell and service, including warranty service, all products offered and sold in response to the bid invitation or under any **H-GAC** contract.

b. **Offeror** shall provide detailed Parts and Labor Warranty information with the Response. If **Offeror** submits a warranty with the Response which does not meet the minimum requirements herein, **Offeror** agrees by submission of a Response that such warranty shall be considered to be amended to meet those minimums.

c. Warranties shall be manufacturer's standard and shall be inclusive of any other warranty requirements which may be stipulated elsewhere herein.

d. Any warranties offered by a dealer shall be in addition to the manufacturer's standard warranty and shall not be a substitute for such. **Offeror**'s base price for any Product shall be inclusive of the standard warranty.

e. Complete warranty information will be supplied to **End User** with each Product sold.

a. Warranties need not apply to normal maintenance service or adjustments, or to any product reasonably shown to have been repaired or altered in any way so as to affect its stability, or to any product which has been subject to misuse, negligence, or accident.

f. **Offeror/Contractor** is encouraged to offer extended warranties as an option.

g. Neither **H-GAC** nor **End User** assume any warranty or liability on **Contractor**'s behalf unless made or assumed in writing, initiated by **Contractor**, and agreed to in writing by **H-GAC** or the **End User** respectively.

h. **Contractor** shall be responsible for the execution and effectiveness of all product warranty and shall be the sole source for solution to problems arising from warranty claims. **Contractor** agrees to respond directly to correct warranty claims and to ensure reconciliation of warranty claims that have been assigned to a third party.

22. H-GAC ORDER PROCESSING CHARGE

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

23. PRE-PAYMENTS AND DISCOUNTS

a. Progress, pre-payment and special discounts of any kind may be offered and detailed in the Response. Such discounts shall be clearly explained but shall not be a determining factor in awarding contracts except in the case of tie offerings.

b. Quantity discounts applicable to similar Products sold to one or more **End User** Departments may be offered. Determination as to product similarity shall rest solely with **Contractor**.

c. For specific purchases, any proposed quantity, pre-payment or special discounts shall be clearly shown on the Contract Pricing Worksheet.

24. INSPECTION / TESTING

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

25. PRODUCT DELIVERY

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

a. Title to goods, and responsibility and liability for loss and/or damage in shipping pass to **End User** at the delivery destination after receipt and acceptance have taken place. Cost of shipping/delivery shall be paid by **End User** unless otherwise agreed to by **Contractor**. If **Contractor** will be paying for shipping/delivery, shipping terms must be "F.O.B. Destination, Freight Prepaid". If **End User** will be paying for shipping/delivery, shipping terms must be “F.O.B. Destination – Freight Collect”.

b. The details for the application and calculation of shipping and delivery charges must be stated in the Response on **Form E**. Any freight, shipping or delivery charged to **End User** will be prepaid and added to the invoice and will be clearly shown an any Contract Pricing Worksheet or other quote presented to the **End User**.

c. The estimated delivery time after receipt of order (ARO), inclusive of Saturdays, Sundays and holidays, for all Products offered must be stated in the Response. Actual delivery for any particular order must be confirmed with **End User** at time of order placement and must be stated clearly on the Contract Pricing Worksheet.

d. **Contractor** shall be responsible for delivery and Acceptance according to the requirements of the Contract and the Purchase Order.

e. Contractor shall advise **End User** prior to making any shipment/delivery and shall make such shipment/delivery in accordance with **End User**'s requirements, providing only that such arrangements do not contravene any requirement of the **H-GAC** contract unless agreed to by **Contractor**.

f. The execution of all required tests, certifications and/or licensing, and costs thereof, shall be the responsibility of **Contractor**. Upon request by **End User** or **H-GAC**, **Contractor** shall provide any documentation or certification related to such tests, certifications or licensing.

26. OFFERED PRODUCT ITEM VARIANCES

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

27. REQUIREMENTS FOR SUBMISSION OF A RESPONSE

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

a. Responses shall be submitted in two complete printed sets including an Original and one (1) Copy in separate "hard side" three-ring binders. The outer spine of each binder shall be labeled showing this Invitation No., **Offeror** Name, and either "Original" or "Copy", as applicable. The Original printed response will be

considered to be the binding Response in case of any conflicts between printed copies and electronic copies. Except for required forms, **H-GAC** Invitation documents should not be included in the Response.

b. The Original and the Copy shall be submitted complete, except that the Electronic Media should be submitted only with the Copy.

c. All required **H-GAC** *FORMS* and documents shall be properly completed, without exception or **Offeror**'s Response may be deemed non-compliant. **Offeror** may not modify the format of any **H-GAC** *FORM* in any way. **Offeror** may photocopy or print blank *FORMS* as needed. Information submitted on the printed copies of the *FORMS* may not be handwritten except for signatures and initials. It is **Offeror**'s responsibility to ensure that printed *FORMS* are clear and legible. Handwritten and illegible entries may be rejected. **Offeror**'s printed, stamped or typed name shall appear on every *FORM* submitted in the Response.

d. **The entire response submission** shall also be submitted on electronic media, including all required **H-GAC** *FORMS*. **Offeror** is strongly advised to make and work with copies of the original electronic *FORMS*. The originals can then be used to make additional electronic or printed copies of the blank *FORMS*. Signatures are not required on the electronic *FORMS*.

e. The Response shall include ample written evidence, in the form of technical specifications, cut/tear sheets, brochures, pictures, drawings, etc., to demonstrate that all specifications herein have been met and/or exceeded.

f. The Response shall include, in any format desired, an overview of the **Service Organization** which will support Products sold under any **H-GAC** contract. The overview must include facility locations, phone numbers and Service Manager names, as well as the following:

- The procedure to be used by an **End User** requiring repairs.
- Typical turn-around time on repairs.
- Service Department days and hours of operation.
- Number of qualified / factory trained service personnel normally on hand.
- Description of the parts inventory on hand.
- Training services, facilities and personnel available.

g. Responses shall be enclosed in a sealed package(s) addressed to the Houston-Galveston Area Council, Cooperative Purchasing. The following information shall be stated on the exterior of the package(s):

- Name and address of **Offeror**.
- Date and hour of public response opening.
- Bid/Proposal Invitation number.
- The statement: **"SEALED BID/PROPOSAL, DO NOT OPEN IN MAIL ROOM"**.

H-GAC shall not be responsible for any Response not properly labeled.

h. Submission of a COMPLETE Response by telegraphic or electronic transmission is not acceptable. However, Responses may be modified by telegraphic or electronic notice if such notice is received prior to the deadline for submission.

i. Samples, when required, shall be submitted within the time specified and at no expense to **H-GAC**. If not destroyed or consumed during testing, samples will be returned upon request at **Offeror**'s expense.

j. **Offeror** shall provide firm contract pricing for all Products and Options being offered.

k. If applicable, responses shall include copies of all current licensing which may be required by the Texas Motor Vehicle Division for execution of sales pursuant to any contract with **H-GAC**.

l. Due to the complexity of responses and to aid in evaluation, the Response should contain **ALL** required information in tabbed sections as detailed below. Omission of any required *FORM* or information will be sufficient grounds for **H-GAC** to consider your response to be non-compliant.

m. **First Section:**

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

- **Form W-9 – Request for Taxpayer Identification Number and Certification**: Should be completed by each party to the response.
- **Form CIQ – Conflict Of Interest Questionnaire:** Chapter 176 of the Texas Local Government Code requires vendors and consultants contracting or seeking to contract with **H-GAC** to file a Conflict of Interest Questionnaire (CIQ) if they have an employment or other business relationship with an **H-GAC** officer or an officer's close family member. The required questionnaire is located at the Texas Ethics Commission website: http://www.ethics.state.tx.us/whatsnew/conflict_forms.htm. It is Bidder's responsibility to download the form and furnish a completed copy with the Response.
- **Form 1295 – Certificate of Interested Parties** – Must be filled out electronically with the Texas Ethics Commission's online filing application, printed out, signed and provided from each entity that has submitted a Form A for this submission.
- **House Bill HB 89 Verification Form** – completed and signed and provided from each entity that has submitted a Form A for this submission.
- **References,** formatted as described elsewhere herein.
- **Service Organization Document**, formatted as described elsewhere herein.

Second Section:

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

Third Section:

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

Fourth Section:

- Copies of any applicable Texas MVD Licenses.
- Electronic Media, containing the complete response including all required *FORMS*, stored in a pouch or an envelope such that it will not fall out of the binder. (Required in 'Copy' only, not in 'Original'.)

n. By submittal of Response, **Offeror** certifies to the best of its knowledge that all information is true and correct.

28. CLARIFICATION TO SPECIFICATIONS & REQUIREMENTS

a. If **Offeror** is in doubt as to the meaning of any item in this Invitation, a written request for clarification may be submitted to **H-GAC** up to fifteen (15) calendar days prior to the deadline for response submission. **H-GAC** shall not be responsible for late delivery. Requests may be transmitted by FAX or e-mail to the assigned Specification Specialist and should clearly reference this Invitation number and the specific page and paragraph in question. If there are multiple questions, they should be stated separately and numbered.

b. Any interpretation of Invitation documents, if made, will be by written Addendum duly issued. A copy of such Addendum will be mailed or delivered to each person officially on record as having been sent a copy of this Invitation. **H-GAC** will not be responsible for any other explanation or interpretation of the Invitation documents made or given prior to the award of the contract.

c. Any objections to the Invitation documents must be filed in writing with **H-GAC** on or before fifteen (15) calendar days prior to the deadline for submission of responses.

d. Prospective offerors are advised that, after a draft specification has been issued, the Pre-Bid/Proposal Conference is the primary forum through which comments and suggestions may be offered for consideration by **H-GAC** prior to issuance of the final invitation and specifications.

e. All best efforts have been made to ensure that the product/service descriptions and associated specification information in Sections B & C are correct, and adequate time has been given to prospective Offerors to point out mistakes. However, if an error remains and is caught by Offeror before the scheduled bid/proposal opening, Offeror shall make note of the required correction in the Response and shall also notify **H-GAC** prior to the opening of responses.

29. INCONSISTENT INFORMATION

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

30. REJECTION OF RESPONSES

a. **H-GAC** may reject a response if:
   - **Offeror** misstates or conceals any material fact in the Response, or if,
   - **Offeror** does not strictly conform to law or the requirements of this Invitation.

b. **H-GAC** may reject any and all responses and may reject any part of a response.

c. **H-GAC, at its sole discretion,** may also waive any formalities or irregularities in any response, or ask for corrected information except for pricing.

d. **The following occurrences require disqualification of the bid/proposals:**
   - Unsigned or unauthorized signatures on bids/proposals;
   - Bids received after the date and time for opening
   - Bids where prices are conditional on award of another bid or are subject to unlimited escalation

e. **H-GAC** may refuse to award a contract to or enter into a transaction with an apparent low bidder if that bidder is indebted to **H-GAC.**

31. WITHDRAWAL OR MODIFICATION OF RESPONSES

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

32. RESPONSE EVALUATION

For Bid Responses:

a. Section B will state whether the contract will be awarded to the lowest responsible bidder or to the bidder who provides goods or services at the best value for **H-GAC** and its participants.

b. If the contract will be awarded based on best value, Section B will state any relevant criteria which **H-GAC** will consider.

c. For each offered Product Item, **H-GAC** may use the offered price, prices for Required Options, and the prices of selected common Published Options to determine the lowest responsible offer.

d. Failure of **Offeror** to submit pricing for **frequently purchased** options and any **H-GAC** required options may cause response to be considered non-compliant at **H-GAC**'s sole discretion.

For Proposal Responses:

e. **H-GAC** will evaluate proposals as detailed in Section B.

f. By submission of a Response Offeror indicates acceptance of the evaluation technique and recognizes and accepts that **H-GAC** may at its sole discretion make subjective judgments during the evaluation process.

33. ORDER OF PRECEDENCE PRIOR TO CONTRACT AWARD

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

34. AWARD OF CONTRACT

a. **H-GAC** reserves the right to accept or reject any Product Item or option offered. Additionally, all options included in Offeror's response and accepted by **H-GAC** are understood to be included in any contract.

b. **H-GAC** shall award contract(s) for line items or groups of line items, at its sole discretion.

c. With authority granted by the **H-GAC** Board of Directors, a written contract shall be presented to the successful **Offeror**(s) and shall be subject to acceptance by the successful **Offeror**(s) within forty-five (45) calendar days after presentation by **H-GAC**. If a contract is not executed within forty-five (45) calendar days, **H-GAC** may rescind the contract offer and award a contract to the next **Offeror** in order of rank as determined by **H-GAC**.

d. Delivery time and prompt payment discounts, including time allowed for payment, may be considered in tie-breaking of offers which are judged by **H-GAC** to be equal in all other criteria.

e. The contract shall include the following documents in the stated order of precedence:

1st The contract document signed by **H-GAC** and **Offeror**.
2nd This Invitation and all specifications referenced herein.
3rd **Offeror**'s response to this Invitation.

35. PRO-FORMA CONTRACT

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

36. CONTRACT TERM

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

37. PERFORMANCE & PAYMENT BOND

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

38. CHANGE ORDERS

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

39. DUPLICATION OF TERMS OR STATEMENTS

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

40. PUBLICITY

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

41. TAXES

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

42. DRUG FREE WORKPLACE

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

43. PRODUCT NOTICES & MAILINGS

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

44. HANDLING OF ORDERS & PAYMENTS

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

a. For any particular procurement to be made under the provisions of an **H-GAC** contract, **End User** and **Contractor** will discuss requirements and agree as to what will be provided.

b. **Contractor** will prepare a Contract Pricing Worksheet and provide it to **End User**. The Worksheet will list everything being purchased including the base bid item(s), all published and unpublished options and the delivery date. All pricing shall be per the current contract.

c. **End User** will send a purchase document to **Contractor**, which **Contractor** will send **H-GAC** together with the Contract Pricing Worksheet. **NOTE: Contractor** agrees not to offer, agree to or accept from End User any terms or conditions that conflict with or contravene those in **Contractor**'s **H-GAC** contract, except for pricing discounts.

d. **H-GAC** will prepare an "Order Confirmation" and send it to **End User** and to **Contractor**. The Order Confirmation verifies that **Contractor** has a valid **H-GAC** contract and that the order is in compliance with the requirements of the **H-GAC** Cooperative Purchasing Program. **Contractor** will not ship any goods before receipt of both **End User**'s purchase document and **H-GAC**'s Order Confirmation.

e. On notification that **Contractor** has received an order, **H-GAC** will invoice **Contractor** for the applicable Order Processing Charge. **NOTE:** The Order Processing Charge is charged to **Contractor**, **EXCEPT in the case of motor vehicles**. For all sales of motor vehicles, the Order Processing Charge is levied on the **End User**, collected by **Contractor**, and remitted to **H-GAC** by Contractor.

f. **Contractor** will deliver products/services ordered and will invoice **End User** for products/services accepted by **End User**. (See other Sub-Section herein dealing with Product Delivery.) **Contractor** will not invoice before shipment has been made.

g. **End User** will pay **Contractor** for those products and/or services ordered which have been received and accepted. Under no circumstances shall any check be made payable to a representative or agent. Should a representative or agent submit an invoice to **End User** for any cost related to a purchase order issued to **Contractor** for products/services covered by an **H-GAC** contract, such invoice shall be forwarded to **Contractor** and **Contractor** will take action to correct the error.

h. Upon delivery of any product/service by **Contractor** and acceptance by **End User**, **Contractor** shall remit to **H-GAC** the full amount of the applicable Order Processing Charge in accordance with the payment terms established in the **H-GAC** contract. Note, the Order Processing Charge is due whether or not **Contractor** has ever received an invoice from **H-GAC**. Sales executed based on the particulars of **Contractor**'s **H-GAC** contract, without payment of the Order Processing Charge, may constitute fraud.

45. PRICE CHANGES

a. Any permanent increase or decrease in offered pricing for a base contract item or published option is considered to be a price change. Temporary increases in pricing by whatever name (e.g. 'surcharge', 'adjustment', 'equalization charge', 'compliance charge', 'recovery charge', etc.), are also considered to be price changes.

b. Except in the case of contracted published catalogs and price sheets, prices for Base Bid Items and Published Options are expected to be held firm for a minimum of 90 days from the date an awarded Offeror signs the H-GAC contract. Thereafter, changes will be considered if accompanied by justifying documentation satisfactory to H-GAC. For published catalogs and price sheets which are on an H-GAC contract, requests to amend the contract to reflect any new published catalog or price sheet may be submitted whenever the manufacturer publishes the new document. Any such request must include the new catalog or price sheet.

c. If **Contractor** routinely offers discounted contract pricing, **H-GAC** may request **Contractor** to accept amended contract pricing equivalent to the routinely discounted pricing.

d. No price change will be allowed unless it has been reviewed and approved by **H-GAC** in writing. **Contractor** must have received **H-GAC's** written approval of any change prior to charging the new price or using it in any quotation prepared for an End User.

e. Price change requests must be submitted to **H-GAC** in writing and must be received by **H-GAC** at least thirty (30) calendar days prior to the requested effective date of the change and must state the time period for which the requested pricing will remain firm.

f. Price change requests shall include **H-GAC Forms D** and **E**, or whatever documentation was used to submit pricing in the original Response hereto, showing all affected items with current contract price, requested price, and percentage change shown clearly for each. This documentation should be submitted in MSExcel format to facilitate analysis and updating of the website.

g. Price change requests **MUST** be supported with substantive documentation (e.g. manufacturer's price increase notices, copies of invoices from suppliers, etc.) showing that **Contractor's** actual costs have increased. The Producer Price Index (PPI) may be used as partial justification, subject to approval by **H-GAC**, but no price increase based solely on an increase in the PPI will be allowed.

h. All Products shall, at time of sale, be equipped as may be required under any then current applicable local, state, and federal government requirements. If, during the course of any contract, changes are made to such government requirements which cause a manufacturer's costs of production to increase, **Contractor** may increase Product pricing to the extent of **Contractor's** actual cost increase. The increase must be substantiated with support documentation acceptable to **H-GAC** prior to taking effect. Modifications to a Product required to comply with such requirements which become effective after the date of any sale shall be the responsibility of the **End-User**.

i. In cases involving contract extensions exceeding sixty-one (61) days beyond the stated expiration date of the contract, **Contractor** may request a price change based on the same conditions as stated above. However the thirty (30) day prior notice is waived and **H-GAC** will consider the request immediately on receipt.

j. H-GAC reserves the right to accept or reject any price change request. Acceptance, if granted, will be in writing and the approved changes will become part of the contract.

46. CONTRACT ITEM CHANGES

a. If a manufacturer discontinues a contracted item, that item will automatically be considered to be deleted from the contract with no penalty to Contractor. However, **H-GAC** may at it's sole discretion elect to make a contract award to the next low offeror for the item, or take any other action deemed by **H-GAC** to be in the best interests of **End User**s, at its sole discretion.

b. If a manufacturer makes any change in a contracted item which does not affect the contract price, Contractor shall advise **H-GAC** of the details. If the 'new' item is equal to or better than the originally contracted item, the 'new' item shall be approved as a replacement. Otherwise **H-GAC** may allow or reject the change, or take any other action deemed by **H-GAC** to be in the best interests of **End User**s, at its sole discretion. If the change is rejected there will be no penalty to Contractor.

c. If a manufacturer makes any kind of change in a contracted item which affects the contract price, Contractor shall advise **H-GAC** of the details. **H-GAC** may allow or reject the change at its sole discretion. If the change is rejected there will be no penalty to Contractor. However, **H-GAC** may elect to make a contract award to the next low offeror for the item, or take any other action deemed by **H-GAC** to be in the best interests of **End User**s, at its sole discretion.

d. In the case of specifically identified catalogs or price sheets which have been contracted as base bid items or as published options, routine published changes to products and pricing shall be automatically incorporated into the contract. However, **Contractor** must still provide thirty (30) calendar days written notice and an explanation of the changes to products and pricing. **H-GAC** will respond with written approval.

47. FORCE MAJEURE

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

48. PERFORMANCE UNDER CONTRACT

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

a. Appoint a dedicated representative to be the contact person and focal point for all matters relating to End User quotations and orders. The representative shall have: A toll free phone number with voice mail; A fax number; A working e-mail address; and A postal address.

b. Insure that the representative timely monitors all communication modes listed above, and promptly responds to communications from **End User**s and **H-GAC** in any of these modes. Phone calls will be promptly returned, in any event not later than the next business day. Acceptable failure will be due only to Force Majeure.

c. Maintain sufficient qualified staff to promptly process all communications from **H-GAC** or **End User**s, and to efficiently, effectively and accurately service all requirements of the contract.

d. As may be requested by **H-GAC**, replace any staff members who are not providing the service and expertise deemed necessary by **H-GAC** for acceptable support of **End Users**.

e. Properly prepare and provide to **End User** a Contract Pricing Worksheet, or a quotation in other format as approved by **H-GAC**, for each and every order that is to be executed.

f. Furnish, on request of **H-GAC**, reasonable data, forms and graphic material to be used in brochures or other print media, or on **H-GAC**'s website.

g. Allow access to **H-GAC** authorized personnel for inspection of operating facilities, and auditing of purchase orders during the contract period, and for a period extending thru the completion of any outstanding orders. Site inspection may be arranged not less than ten (10) calendar days prior, shall include the names of all participants, and shall be at no expense to **Contractor**.

h. **Reporting Requirements:**
   - **Contractor** agrees to submit written quarterly reports to **H-GAC** detailing all transactions during the previous three-month period. Such reports shall include, but are not limited to the following:
   - **End User** name
   - Product/Service purchased, including Product Code if applicable
   - End User Purchase Order Number
   - Purchase Order Date
   - Product/Service dollar amount
   - **HGACBuy** Order Processing Charge amount
   - Reports must be provided to **H-GAC** in MSExcel or other acceptable electronic format and are due by the 30th day of the month following the applicable quarter being reported.

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

49. CONTRACTOR ORIENTATION/TRAINING

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

HGACBuy Program should participate in orientation. The orientation may be presented as a teleconference or webinar or may be held in **H-GAC**'s offices as may be determined by **H-GAC** and Contractor to be the most efficient and effective form of delivery.

50. LEGAL & CONTRACTUAL REMEDIES

RESOLUTION OF PROTESTED SOLICITATIONS AND AWARDS

Procedure

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

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

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

Expedited Resolution

The Procurement Officer or Departmental Director responsible for the solicitation shall contact the complainant and all interested parties and attempt to resolve the allegations informally within ten (10) working days from date of complaint. If the allegations are successfully resolved by mutual agreement, documentation will be forwarded to the Chief Operations Officer of the resolution with specifics on each point addressed in the original complaint.

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

Appeals

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

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

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

RESOLUTION OF CONTRACT DISPUTES

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

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

SOLICITATIONS OR AWARDS IN VIOLATION OF THE LAW

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

51. NATIONWIDE SALES OPPORTUNITIES

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

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

End of Section A General Terms & Conditions

SECTION-B: PRODUCT SPECIFIC REQUIREMENTS
For
Statewide Automated Vehicle Procurement

IMPORTANT
Responses will be accepted through online electronic submission only. Bidder response portal and online submission instructions will be posted to this HGACBuy website address:
https://www.hgacbuy.org/bid-notices

1.0 INTRODUCTION
The Houston-Galveston Area Council (H-GAC) is a government regional planning commission, part of a larger Texas *Council of Governments.* Included within H-GAC is the HGACBuy program, which issues bid and proposal solicitations and makes awards on behalf of our local government Members -- over 8000 across 49 states, comprised of municipalities, counties, K-12 schools, universities, et cetera. These solicitations cover a variety of goods and services, for use within, and beyond Texas by our Members. Any local government or non-profit organization may participate in the Program so long as their state law allows.

Automated vehicles are being tested and deployed in Texas, and beyond, in environments that include office parks, hospitals, university campuses, industrial facilities, entertainment districts, downtown districts, and "last mile" connections to and from public transit facilities. Automated vehicles may provide enhanced mobility options for those who are unable to drive or do not have access to a standard vehicle. Since automated vehicles generally have electric powertrains, environmental benefits exist, especially in areas that utilize renewable energy sources to generate electricity. Many automated vehicles are intended for multi-occupant use, which improves roadway capacity without having to physically expand the roadway

This specification package describes automated vehicles ("AVs") / Self-driving vehicles (SDVs) and related services for use by our Texas Members. Additional proposal pricing for purchases or leases for states other than Texas may be included in Proposers response, but these alternative states and their pricing must be specifically named in Offeror's response, separate from the Texas pricing. H-GAC contracts awarded relative to this Invitation will cover a three (3) year period (commencing on or about November 1, 2020). If an H-GAC Contractor realizes price increases during this contract, a contract price change may be requested, per this specification's Section-A (Terms & Conditions section) guidelines). **H-GAC expects Offeror (as confirmed by a response to this Invitation) to have the capability and willingness to serve any H-GAC Member.** As noted in Section-A, a offeror under this contract may petition H-GAC for an assignment (e.g. to a third party such as another dealer in another sales territory), whereby, if they are agreeable to the terms & conditions and contract pricing, the third party may then be added onto the contract as an additional, independent offeror, capable of quotations, installation, receiving of end user payments, and the remittance of the purchase order processing charge.

Approximately one-third of all trips in the United States are two miles or less. To address this sector of the transportation market HGACBuy is seeking proposals from qualified offerors for:

1. The manufacture and delivery (through sale or lease) of automated vehicles that are designed to serve the short-trip market, including associated maintenance and operations support.
2. Transportation services tied to the use of such automated vehicles.

► Note Regarding AV Transportation Services:
• Most public entities will want turnkey/one-stop-shop AV Deployment solutions where the offeror provides both the vehicles and services necessary for a successful deployment.
• Offerors will be required to plan, design, furnish, test, implement, maintain, insure and manage an AV deployment.

► Note to AV Developers: You may provide vehicle-only pricing, but we also encourage you to provided all-inclusive AV Deployment packages.

► To AV Consultants: This procurement is focused on AV Vehicles and mobility solutions that include AV's. **This procurement is NOT focused on offerors who provide only AV consulting services**. We encourage such consultants to team up with one or more AV manufacturers and mobility suppliers as your consulting work may be a valuable part of the package of services provided in conjunction with an AV deployment.

2.0 SCOPE

HGACBuy is soliciting proposals for the purpose of selecting qualified providers of qualified automated vehicles on behalf of HGACBuy Texas Members for automated vehicles, primarily for deployment in a variety of urbanized environments such as universities, downtowns, office campuses, and neighborhood "last mile" connections to transit facilities. HGACBuy is requesting written proposals from automated vehicle manufacturers and/or those who supply transportation services using automated vehicles. Section-B of this RFP details specific HGACBuy minimum requirements and other specifications applicable to automated vehicles/services. For any required feature stated in general terms, it is understood that OEM standard shall meet the requirement.

Proposers shall demonstrate how sales, service, training and support will be provided and achieved. Organization structure, including all sales and support centers, should be detailed, including the number and type of employees at each. Local governmental references, including contact and contact information shall also be provided as part of any response.

Our members may prefer to purchase selected services and/or products, or they may be looking for a full turnkey project, necessitating additional services, training and maintenance agreements. Proposers must have the ability to effectively sell and service HGACBuy Members. It is the objective to solicit responses from several providers and to award contracts to those proposers that meet or exceed the expectations laid out in this RFP. It is incumbent upon Offerors to present adequate details in its response as to put it in the best possible light relative to H-GAC's scoring of proposals.

3.0 POTENTIAL APPLICATIONS

HGACBuy has identified a variety of potential use cases for automated vehicles in low-speed environments. Offerors should propose automated vehicle solutions for such use cases and other transportation use cases for which the offeror's automated vehicles may add significant value. These potential use cases include the following:

- Educational campuses: Transportation services in and around the campuses of educational institutions, including transport of students, employees and visitors around campus and to/from nearby parking and transit facilities.
- Hospital complexes: Transportation of employees and visitors in and around hospitals and other medical facilities.
- Business / industrial parks: Providing both internal circulation and connection to nearby facilities for the employees of office campuses, large industrial facilities and businesses such as distribution and warehouse operations with goal of giving employees a viable option to function car-free.
- Military bases: Providing mobility services in and around military installations.
- Entertainment districts: Connecting attractions within entertainment districts and connecting the entertainment district to nearby lodging, parking and transit facilities.
- Last-mile transit connection: Enhancing access to/from transit facilities by connecting nearby neighborhoods, job sites and other areas with such facilities.
- Downtown and surrounds: Providing access to and around downtown job centers and attractions in cities and towns of various sizes.
- Senior transport: Giving seniors an alternative to driving themselves or relying on third parties for transport so that they are more likely to be able to successfully.
- Medical transport: Providing patients a reliable way to access medical care appointments.
- Municipal fleets: Incorporated automated vehicles into municipal fleets.

4.0 LEVELS OF AUTOMATION

For the purpose of this Invitation and subsequent contract(s), SAE International's most current standard shall prevail, which defines the six levels of driving automation, from no automation to full automation. Consistent with industry practices, the standard helps to eliminate confusion by providing clarity and is frequently cited and referred to by industry and media. In general, SAE J3016 levels and definitions include:

Levels 0-3: Human driver monitors the driving environment

- Level 0 – No Automation: Full-time performance by the human driver of all aspects of the dynamic driving task, even when enhanced by warning or intervention systems.
- Level 1 – Driver Assistance: The driving mode-specific execution by a driver assistance system of either steering or acceleration/deceleration using information about the driving environment and with the expectation that the human driver performs all remaining aspects of the dynamic driving task
- Level 2 – Partial Automation: The driving mode-specific execution by one or more driver assistance systems of both steering and acceleration/deceleration using information about the driving environment and with the expectation that the human driver performs all remaining aspects of the dynamic driving task
- Level 3 – Conditional Automation: The driving mode-specific performance by an Automated Driving System of all aspects of the dynamic driving task with the expectation that the human driver will respond appropriately to a request to intervene

Levels 4-5: Automated driving system monitors the driving environment

- Level 4 – High Automation: The driving mode-specific performance by an automated driving system of all aspects of the dynamic driving task, even if a human driver does not respond appropriately to a request to intervene
- Level 5 – Full Automation: The full-time performance by an automated driving system of all aspects of the dynamic driving task under all roadway and environmental conditions that can be managed by a human driver

5.0 VEHICLE REQUIREMENTS

5.1 Factors that are important to HGACBuy and its public entity partners with respect to this procurement include the following, for which proposer should address in its response:

- Safety: Automated vehicle technology needs to provide safe transportation for users and protect the safety of nearby pedestrians, bicyclists and vehicles.
- Range and reliability: Automated vehicles need to have sufficient onboard batteries or quick charging infrastructure to be able to provide reliable service for a minimum 8-12-hour service period within an operationally useful service range.
- Cost: In this procurement HGACBuy is interested in the **"all in"** cost of operating an offeror's automated vehicle. Such costs include the costs of programming the vehicle, programming the route, maintenance, software updates, charging, customer support and onboard staffing, if any.
- Adaptability: The proposed automated vehicle(s) should be able to operate in a variety of environments, ranging from campuses to public streets, although automated vehicles with very specific but useful applications will be considered. Automated vehicles preferably should be able to operate in close proximity with pedestrians, bicycles and other vehicles without requiring dedicated lanes or other special facilities, although vehicles that require dedicated lanes or facilities are not disqualified so long as these requirements are clearly laid out in the offeror's RFP response.
- Access: Automated vehicles that provide access to individuals with disabilities are strongly encouraged and may be required by some public entities.
- Infrastructure: Automated vehicles that can operate within the current operating environment without the need for major investments in hard or electronic infrastructure are favored. Offeror should outline what infrastructure improvements, if any, are required for the safe and effective operation of their vehicles.
- Data: Offeror should share non-proprietary data about the operation of their vehicles (e.g., number of passengers, average speeds, incidents). Note that HGACBuy and its public entity partners have no interest in personally identifiable information about those who ride on offeror's automated vehicles.
- Privacy/Cyber security: Offeror should have a plan to protect the privacy of vehicle users (e.g. controls over access to any onboard video) and the security of the software used to operate their automated vehicle, including controls and processes in place to respond to a cyber-attack

or other such malicious activity.

- Insurance: Offeror should be prepared to provide proof of insurance offering a level of coverage that meets the insurance requirements under the law applicable to the vehicle type.
- Climate control: Vehicles must be capable of providing comfortable transportation in a wide range of environmental conditions.
- Support: Offeror should have robust customer nationwide support, including technical support, mechanics, engineers and programmers.
- User information: Offeror should have some method for passenger users to access information about the location, availability and arrival time of their automated vehicles.
- Connected Vehicle: Offeror should indicate whether and how vehicles connect with each other or the infrastructure using vehicle-to-vehicle and vehicle-to-infrastructure technology (collectively "V2X" such as Dedicated Short-Range Communication ("DSRC") or Cellular-V2X).
- Routes: Offeror should detail and price options and specific solutions with respect to fixed routes versus flexible routes, dispatch and ride-sharing capability/services, automated vehicle services, et cetera.

5.2 Note: Per the *Texas Interlocal Cooperation Act*, a governmental entity may not use an interlocal contract with a purchasing cooperative to purchase engineering or architectural services (*Texas Government Code, Section 791.011(h).* Consequently, if a response includes quotes either of these pricing elements, that portion will not be included in award.

5.3 Licensing and Safety

H-GAC expects Offeror / Contractor to stay current and in compliance with federal safety requirements and Texas (and any other applicable state) motor vehicle licensing requirements during the life of this contract. Licensing requirements for AVs in Texas (and other states) vary by state, and are subject to change, with varying factors that may include usage designations (private vs. public roads), et cetera.

6.0 AUTOMATED VEHICLE TECHNICAL SPECIFICATIONS

Proposer shall supply descriptions for each system and vehicle priced in its response, detailing what features are included in the prices quoted on Form-D and address the items below - including but not limited to:

- Description of vehicle
- Dimensions of vehicle
- Powertrain
- Operating speeds
- Level of automation
- Passenger capacity / seating configuration
- Handicapped accessibility (ramp)
- Maintenance of interior climate control in wide range of environmental conditions
- Vehicle service range
- Charging equipment and requirements
- Charging time (for vehicle platforms proposed)
- Operating software (for vehicle platforms proposed)
- Sensors
- Safety features – both passive (seat belts) and active (AV Systems)
- Passenger security features
- Onboard staffing required
- Remote monitoring and operation capabilities
- Maintenance requirements, covering hardware, software and route
- Warranties
- How Infrastructure requirements to allow or improve deployment is implemented
- How vehicle routing is established during an operation and/or contract, including details on booking trips
- How operational requirements and limits are implemented
- Data collected during operations
- Types of operational data offeror will share with contracting party.

- Security protocols covering data collected during operations
- Operational data offeror will make available to public entity that has deployed vehicle
- Cybersecurity protections covering operational software
- Connected vehicle capabilities
- "Black Box" event recording capabilities
- Other relevant hardware and software features

7.0 CONTRACT PROVISIONS FOR NON-FEDERAL CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the federal agency or non-federal entity, all contracts made by the non-federal entity under the federal award must contain provisions covering the following, as applicable.

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

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be affected and the basis for settlement.

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

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the federal awarding agency.

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

(F) Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

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

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

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier, up to the non-federal award.

8.0 H-GAC ORDER PROCESSING CHARGE

H-GAC will assess a 1.5% Purchase Order Processing Charge on each lease placed with a contractor through the Program as detailed below. This Cooperative Purchasing Program is supported solely by this processing fee.

Leased Vehicles: The H-GAC fee on leased units shall cover the entire term of the lease and the fee payment shall be made to H-GAC in a lump-sum amount up front and not carried over the term of the lease (For example: $1000.00/mo. x 24 months (Term) = $24,000 x 1.5% = a $360.00 H-GAC fee). If the Member decides to purchase the vehicle; either at the end of the leasing term or prior to the end of the leasing term, this process shall be at the sole discretion of the Member and Contractor and no additional H-GAC fees shall be assessed. Additionally, H-GAC shall not reimburse fees to Members when the leasing term has been prematurely cut short for whatever reason.

Purchased Vehicles: Vehicle sales will not include the 1.5% fee. Sales of motor vehicles are subject to a $600 flat fee, per Purchase Order, and separate from the price of the vehicle(s).

Fee is calculated from awarded bid pricing before additional discounts (if any) have been applied.

9.0 Competitive Pricing:

By submission of a response, Offeror certifies that offered pricing is as good as or better than pricing offered to local government customers through any other program, under normal circumstances. If such is not the case, Offeror shall explain how offered pricing differs from "best" pricing, and by how much.

Note: On each lease order under this contract, H-GAC will invoice contractors directly for the 1.5% H-GAC purchase order processing charge. It is Bidder's responsibility to take this into consideration when preparing Form-D and Form-E pricing, building this fee into the equipment and services prices accordingly.

10. PROCUREMENT PROCESS

The HGACBuy procurement process operates generally as follows:

1. Member (end user) contacts Contractor and discusses requirements.
2. Contractor prepares an HGACBuy quote based on its H-GAC contract.
3. Member sends a purchase order to Contractor and Contractor provides a copy to H-GAC, along with the sales data on H-GAC's Contract Pricing Worksheet.
4. For each purchase order received, H-GAC will prepare an "Order Confirmation" and transmit it to Member and Contractor. The Order Confirmation verifies that Contractor has a valid H-GAC contract and that the order is being handled legally through the HGACBuy Program.
5. H-GAC will invoice Contractor for the Order Processing Charge.
6. Contractor delivers the ordered products and invoices Member.
7. Member pays Contractor for products received and accepted.
8. Contractor remits Order Processing Charge to H-GAC.

11.0 MISCELLANEOUS – TIME FRAME AND PRICE CHANGES

Lease and purchase pricing should be based on a single unit over a (1) year timeframe. Offeror is encouraged to also offer different lease durations and vehicle quantity rates as options on Form-E. Both price change requests and contract changes to this contract will be processed as detailed in Section A, Terms & Conditions.

12.0 STRUCTURE OF RESPONSE AND REQUIRED INFORMATION

Proposer shall provide the information described below, labeled and tabbed to correspond with the designated Tab headings (A thru F) being bid. The requested information within each of these Tabs (A-F) items must be addressed completely. It is this information that will be evaluated and determine the proposers final score. Scores on Responses not organized in the prescribed manner will reflect such shortcomings, or, at H-GAC's discretion, may be eliminated altogether.

- **Overall Responsiveness (Pass/Fail)**
  Correct completion and submittal of all required documents as described herein (including HGAC forms packet, business references and service organization documents (ref. Section-A), and all other required documents.

- **Tab-A: H-GAC Products & Pricing**
  As pulled form H-GAC Forms Packet, Form-D, Form-E, and any other applicable data submitted.

  - Contractor shall use these Forms to price the products and services they intend to provide to H-GAC Members through an HGACBuy contract. Forms may not be reformatted. The Forms packet (comprised of Forms A, B, C, D, E, and H) shall be provided in is original unaltered Excel format, inclusive of all its original tabs/worksheets.

  - Pricing on Form-D should be completed with fully burdened pricing, per-unit to include all necessary elements such as but not limited to labor, materials, overhead, and fee/profit needed to perform all of the services described in this solicitation. Offeror shall list each vehicle platform covered in their response on Form-D for this proposal.

  - Proposers shall provide the below information on Form-D:

    1. Manufacturer / Offeror
    2. Vehicle Name / Model
    3. Level of Automation Driving (0-5)
    4. Seating Capacity
    5. Propulsion System
    6. Top Speed
    7. Included Services and Features: Proposer shall provide in detail the services and features of the vehicle platform and/or service being bid, including any maintenance and operations support.

8. Monthly Lease Price: For each vehicle platform, the offeror must provide a firm-fixed base lease price for (90) days from the date the contract is signed. This price should be the all-inclusive cost to deploy, operate and maintain the automated vehicle.
9. Purchase Price – Offerors may but are not required to include a firm fixed price (90 days) for the outright sale of their automated vehicles. This price should include any annual software license and maintenance fee.

Proposal Pricing shall be exclusive of freight charges, which will be addressed at the time of each individual lease and/or purchase, as a purchase order line item, specific to the individual Members location. For offerors offering Transportation Services that include automated vehicles, the price should include the all-in cost of operating the automated vehicle. Licensing/Inspection - Offeror shall have vehicle properly inspected and licensed to meet the Texas Motor Vehicle requirements of the state in which the vehicle is originally sold, and the quoted price shall include these fees.

- Form-E:
  Proposers shall provide those transportation services associated with automated vehicles (e.g. test beds and pilot programs, mobility services and turn-key package for vehicles and associated support). Options offered by the contractor such as quantity/volume discounts (e.g. 5, 10, 15 vehicles) and/or training fees should be put on this form. Offeror shall price any one-time fees for things such as site assessment/operations planning, site-setup, operator training, project management, and shipping as an option on Form-E (irrespective of purchase or lease).

- **Tab-B: Automated Vehicle Requirements**
  Proposer shall address compliance with EACH of the factors detailed under the Vehicle Requirements Section in this proposal (Subsection 5.0).

- **Tab-C: Technical Specifications**
  Proposer shall place the completed specification sheets for each line item (vehicle platform and related equipment) bid on Form-D behind this tab. These specification sheets should detail the features and any products/services that are included in the prices being quoted (Offeror shall reference subsection 6.0).

- **Tab-D: Offeror Qualification/Experience**
  Provide detailed company information including, but not limited to:

  1. Ownership, history and current organization.
  2. Location of sales and support offices, telephone numbers and type of employees at each and other matters offeror deems pertinent and introductory in nature.
  3. If a joint venture or partnership is proposed, introduce all joint venture or partnerships members and their associated qualifications.
  4. Offerors shall specify any direct experience in projects of similar size, scope and complexity.
  5. Offeror shall provide detail regarding response time and availability as it relates to technical support, mechanics, engineers and programmers.

- **Tab-E: Value of Proposed Solution**
  Offerors shall demonstrate how sales, service, training and support will be provided and achieved. HGACBuy's members are interested in deploying automated vehicles to address real-life transportation needs. Offerors should outline the types of transportation needs their automated vehicles can effectively address. Substantial weight will be given to descriptions of real-life transportation needs and how automated vehicles currently (or in the foreseeable near future) can address those needs, **especially in a cost-effective manner**.

13.0 EVALUATION OF PROPOSALS

Evaluation of proposals will be based solely on the judgment and determination of the H-GAC staff. Proposals will be evaluated in two stages. The first stage will be a general subjective evaluation of the completeness of the proposal, considering all requirements for submission detailed in Section-A. Proposals deemed to be responsive will then be passed to the second stage. The second stage of evaluation will involve consideration of the criteria specified

below. There will be a maximum score of 100 points. Proposers scoring the minimum 70 points or above may be offered a contract, but the number of contracts offered will be based solely on H-GAC's determination of what best serves the interests of the program participants. Requests for debriefing must be in writing within five (5) days after Board approval. H-GAC reserves the right to not conduct debriefings made after that time. This procedure it not available to parties that did not participate in solicitation or had non-responsive (failing to follow solicitation requirements), non-timely (late), or otherwise rejected proposals/bids.

Proposal Criteria	Weight, Points
Stage 1: Overall bid responsiveness	Pass / Fail
Products and pricing on Form-D, Form-E, etc. (Tab-A)	30
Automated vehicle requirements (Tab-B)	20
Technical specifications (Tab-C):	20
Qualifications / experience (Tab-D):	20
Value of proposed solution (Tab-E)	10
Maximum Score	100

14.0 MARKETING & SUPPORT PLAN (H-GAC FORMS PACKET, FORM-H)

H-GAC expects proposer to have the capability and willingness to serve any H-GAC Member across the nation, and to promote this contract to the best of its ability. Consistent with this, proposer should acknowledge this, with a description of the resources that will most likely be employed (1) in promoting this contract (e.g. sales calls, mail-out campaigns, et cetera, and (2) in serving H GAC Members (e.g. staff appointed to manage the contract, possible revised processes for purchase orders, staff training relating to this contract). Reference the H-GAC Forms Packet for Form-H.

15.0 COMMITMENT

Offeror is required to make some basic commitments to ensure the overall success of this program. By submission of a response, Offeror agrees to the following:

- Corporate/Sales Commitment

A commitment that HGACBuy has the support of senior management and that HGACBuy will be the primary government contracting vehicle when offering services/products awarded from this solicitation to eligible end users nationwide. A further commitment to aggressively market the program, both independently as well in partnership with HGACBuy.

- HUB Participation

It is H GAC's goal to have Historically Underutilized Business Enterprise (HUB) participation in providing services under a contract. If Offeror(s) intends to employ subcontractors in providing services/products related to this solicitation, Offeror(s) shall make and demonstrate a good faith effort to include HUB participation under a contract. Offeror(s) good faith effort shall include, but is not limited to the following affirmative steps (Ref. 2CFR 200.321 as a guide):

1) Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
2) 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;
3) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
4) 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

NOTE: The term HUB as used in this solicitation is understood to encompass all programs/business enterprises such as Small Disadvantaged Business (SDB), Disadvantage Business Enterprise (DBE), Minority Owned Business Enterprise (MBE), Women Owned Business Enterprise (WBE) and Disabled Veteran Business Enterprise (DVBE).

SECTION-C: H-GAC FORMS

For Use In Responding To Competitive Bid And Proposal Invitations

Invitation No.:	**AV11-20**
Title:	**Statewide Automated Vehicle Procurement**

This document contains the following required H-GAC forms:

FORM	DESCRIPTION
Form-A	Offeror Identification and Authorized Signatory
Form-B	Historically Underutilized Business Enterprises
Form-C	Response Checklist
Form-D	Offered Items Pricing
Form-E	Published Options
Form H	Marketing & Support Plan
Form W-9	Request for Taxpayer Identification Number and Certification
Form CIQ	Conflict of Interest Questionnaire
Form 1295	Certificate of Interested Parties
Form HB 89	HB Verification Form
C.I.F.	Contractor Information Form

Offeror shall use the tabbed Excel version of these forms (no PDF)

The forms in this document **may not** be changed or altered in any way, except as may be specified on the form.

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

Invitation No.: AV11-20

Invitation Title: Statewide Automated Vehicle Procurement

Offeror Company: _____

Offeror Status: ☐ **Manufacture** ☐ **Dealer/Distributor** ☐ **Other**

Response Type(1): ☐ **Single Offeror Acting Alone Or** ☐ **Multiple Offerors Acting**

Contract Signatory(2): _____ **Title:** _____

Mailing Address(3): _____
Street/PO Box City State & Zip

Physical Address: _____
Street City State & Zip

Phone: _____ **Fax:** _____

Email Address: _____

Federal Tax ID No.: _____ **Web Page URL:** _____

(1) If Joint Offering, all parties must submit a signed Form A. A contract will be offered to each.
(2) Person who will sign final contract documents if an award is made.
(3) Address to which final contract documents would be sent for signature.

Member Contact Information

Contact Person (4): _____ **Title:** _____

Mailing Address: _____
Street/PO Box City State & Zip

Physical Address: _____
Street City State & Zip

Toll Free Phone: _____ **Fax:** _____

Email Address: _____

(4) Person who End Users will contact for product information and to get pricing quotes.

The Signatory below, on behalf of Offeror:

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

Signature: _____ **Title:** _____

Printed Name: _____ **Date:** _____

FORM-B:HISTORICALLY UNDERUTILIZED BUSINESS ENTERPRISES	Solicitation No.: AV11-20

Title: Statewide Automated Vehicle Procurement

Offeror:

Trucks, Medium and Heavy & Truck Bodies

HUB Status Of Offeror

☐ Offeror is a HUB, as detailed below. ☐ Offeror is not a HUB.

Designation(s): ☐ HUB ☐ DBE ☐ MBE ☐ WBE ☐ Other

*Certifying/Listing Authority(s):

* **Note**: The terms "Certified" and "Listed" as used in conjunction with HUB programs relate to the process of HUB qualification review. Jurisdictions usually require that companies claiming HUB status be reviewed and confirmed as meeting certain minimum requirements to claim that status, and that the review and confirmation process be carried out by certain designated entities.

Members of HGACBuy are subject to various requirements relative to purchasing goods and services from Historically Underutilized Business Enterprises (HUBs)(See Note 1). These requirements are promulgated by federal and state governmental authorities, and include measureable criteria such as "percentage of total dollars spent directed to HUBs", "number of HUB contractors used", "HUB subcontractors employed by primary contractors", etc. These requirements are generally formalized in goal oriented programs.

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

Accepted and Agreed By (Name):	
Title:	Date:

Subcontracts

On a separate sheet, list any subcontractors that would be employed in providing products or services related to this solicitation. Include the following information for each subcontractor:

a. Company Name
b. Address
c. Phone number
d. Applicable HUB designation/certification (DBE, MBE, etc.)
e. Type of work subcontractor has been certified to perform as a HUB. Firm must be certified in a North American Industry Classification System (NAISC) code applicable to the kind of work the firm would perform on the contract.

☐ Subcontractor List attached. ☐ No Subcontractors will be used.

FORM C - RESPONSE CHECKLIST	Procurement No.: AV11-20

Title: **Statewide Automated Vehicle Procurement**

Offeror:

This form is provided to help insure that all required response elements have been completed and included, or certified as being available upon request. **Responses that do not comply with all requirements may be considered non-compliant.**

This Response shall include:

2	A copy of the **complete** submission, including all required H-GAC forms, in electronic format. **The HGAC forms docment shall be unalterend except for the prompted data fields (name, pricing, etc.) and submitted in its original Excel format only (no PDF). Offeror shall not split the Forms document into its respective worksheets, but kept as a single document.**
3	A comprehensive list of applicable priced options on Form-E
4	Detaild specifications for all equipment priced on Form-D
5	An **originally signed** Form-A from all entities who are party to this submission and who should be offered a contract if this submission is successful.
6	The required list of references.
7	Details of "Service Organization", including locations, hours, personnel and parts/service availability
8	Complete warranty documentation for all products offered.
9	Completed Form-H
10	W-9 Form, completed and signed for each party to the bid.
11	CIQ Form, completed and signed for each party to the bid. The form and instructions for its use can be found at: https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm .
12	1295 Form, completed, signed for each party to the bid. The form and instructions for its use can be found at: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm .
13	HB 89 Form for each party to the bid, completed and signed.
14	Contractor Information Form for each party to the bid, completed and signed.

FORM-D: Products and Included Services Offerings (Tab B)	
Offeror Name:	
Invitation No.:	**AV11-20: Statewide Automated Vehicle Procurement**
NOTES	**1. Remember to bid options and accessories on Form-E**
	2. On Form-D, fill-in the Purchase Price and applicable Lease Costs (monthly) under the corresponding headings. Additional lease durations and vehicle quantities can be bid as options on **Form-E. Pricing below to be based upon purchase or leasing of a single unit.** **Note**: Offerors may, but are not required to include a firm fixed price (1 year) for the outright sale of their automated vehicles. This price should include any annual software license and maintenace fee. **Note**: Offerors shall provide Lease Pricing in the spaces below for each vehicle platform bid. This price should be the all-inclusive cost to deploy, operate and maintain a single automated vehicle.
	3. Proposer shall provided a detailed description of the vehicle services and features included in the bid price. If the space below is insufficient, simply put "See Attached Document" in the cell and provide the information on an separate document.
	4. Optional Services & Features to be quoted as options on Form-E.
	5. If something does not apply under a specific heading, mark "N/A"

Manufacturer/ Vendor	Vehicle Name/Model	Level of Automation Driving (0,1,2,3,4,5)	Seating Capacity	Propulsion System	Top Speed (mph)	Included Services & Features (See Note #3)	Purchase Price, in Whole Dollars	Monthly Lease Cost, in Whole Dollars				
Proposer Shall Provide Supplemental Clarifying Documents, as Needed, For the Data Provided Below								1 Year	2 Years	3 Years	4 Years	5 years

Form-E	Statewide Automated Vehicle Procurement	AV11-20
Options Pricing		
OFFEROR:		
Notes: (Important)	(1) Use a single Form-E for ALL options and quote each on a single, separate line. Add or insert additional lines as necessary. (2) Completely describe each item. Include the manufacturer's code or part number. Each item listed MUST have a unique code or part number so that it can be identified in any subsequest contract. (3) Options which are upgrades/downgrades of a Form-D Item should be priced at the differential amount between the cost of the Form D Item and the upgrade/downgrade option.	

Code or Part No.	Option Description	Offered Price

FORM-H -- MARKETING & SUPPORT PLAN	Procurement No.:	AV11-20
Offeror:		

Instructions: Reference Section-B

W-9

Respondent should reference the W-9 form included in this solicitation package. It is a writeable form and should be completed and submitted with response in both printed and electronic formats.

On joint bids, a W-9 form is required for each party to the bid.

CIQ

Respondent should reference the CIQ/Conflict of Interest Questionnaire form included in this solicitation package. It is required and should be completed (even in the absence of a conflct of interest), with name of your company, name of signatory, and signature - submitted with response in both printed and electronic formats.

On joint bids, a CIQ form is required for each party to the bid.

1295

Respondent should reference the Texas Ethics Commission document highlighted in this solicitation package ("Certificate of Interested Parties - Form 1295"). This State of Texas document is found online and must be completed in associated with this solicitation, submitted in both printed and electronic formats.

TEC site:
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

On joint bids, a 1295 form is required for each party to the bid.

HB 89

Prohibition on Contracts with Companies Boycotting Israel

The 85th Texas Legislature approved new legislation, effective Sept. 1, 2017, which amends Texas Local Government Code Section 1. Subtitle F, Title 10, Government Code by adding Chapter 2270 which states that a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

(1) does not boycott Israel; and
(2) will not boycott Israel during the term of the contract

Respondent should reference the *HB 89* form included in this solicitation package. It should be completed and submitted with response in both printed and electronic formats.

On joint bids, an HB89 form is required for each party to the bid.

Contractor Information Form

Respondent shall complete the enclosed H-GAC document, "Contractor Information Form", and include in response in both printed and electonic formats, and included with the other required forms.

On joint bids, a CIF form is required for each party to the bid.

SPECIAL PROVISIONS

Incorporated by attachment, as part of the whole agreement, H-GAC and the Contractor do, hereby agree to the Special Provisions as follows:

ARTICLE 1: BIDS/PROPOSALS INCORPORATED

In addition to the whole Agreement, the following documents listed in order of priority are incorporated into the Agreement by reference: Bid/Proposal Specifications and Contractor's Response to the Bid/Proposal.

ARTICLE 2: END USER AGREEMENTS ("EUA")

H-GAC acknowledges that the **END USER** may choose to enter into an End User Agreement ("EUA) with the **Contractor** through this Agreement**,** and that the term of the EUA may exceed the term of the current **H-GAC** Agreement. **H-GAC's** acknowledgement is not an endorsement or approval of the End User Agreement's terms and conditions. **Contractor** agrees not to offer, agree to or accept from the **END USER**, any terms or conditions that conflict with those in **Contractor's** Agreement with **H-GAC.** Contractor affirms that termination of its Agreement with H-GAC for any reason shall not result in the termination of any underlying EUA, which shall in each instance, continue pursuant to the EUA's stated terms and duration. Pursuant to the terms of this Agreement, termination of this Agreement will disallow the **Contractor** from entering into any new EUA with **END USERS.** Applicable **H-GAC** order processing charges will be due and payable to **H-GAC** on any EUAs, surviving termination of this Agreement between **H-GAC** and **Contractor.**

SAMPLE

ARTICLE 3: MOST FAVORED CUSTOMER CLAUSE

Contractor shall provide its most favorable pricing and terms to H-GAC. If at any time during this Agreement, Contractor develops a regularly followed standard procedure of entering into agreements with other governmental customers within the State of Texas, and offers the same or substantially the same products/services offered to **H-GAC** on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to **H-GAC**, **Contractor** shall notify **H-GAC** within ten (10) business days thereafter, and this Agreement shall be deemed to be automatically retroactively amended, to the effective date of Contractor's most favorable past agreement with another entity. **Contractor** shall provide the same prices, warranties, benefits, or terms to **H-GAC** and its END USER as provided in its most favorable past agreement. H-GAC shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If **Contractor** claims that a more favorable price, warranty, benefit, or term that was charged or offered to another entity during the term of this Agreement, does not constitute more favorable treatment, than **Contractor** shall, within ten (10) business days, notify **H-GAC** in writing, setting forth the detailed reasons **Contractor** believes the aforesaid offer is not in fact most favored treatment. **H-GAC**, after due consideration of Contractor's written explanation, may decline to accept such explanation and thereupon this Agreement between **H-GAC** and **Contractor** shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices, warranties,

benefits, or terms to H-GAC and the END USER.
EXCEPTION: *This clause shall not be applicable to prices and price adjustments offered by a bidder, Proposer or contractor, which are not within bidder's/proposer's control [example; a manufacturer's bid concession], or to any prices offered to the Federal Government and its agencies.*

ARTICLE 4: PARTY LIABILITY

Contractor's total liability under this Agreement, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to the price of the particular products/services sold hereunder. Contractor agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. Contractor accepts liability to repay, and shall repay upon demand to END USER, any amounts determined by H-GAC, its independent auditors, or any state or federal agency, to have been paid in violation of the terms of this Agreement.

ARTICLE 5: GOVERNING LAW & VENUE

Contractor and H-GAC agree that Contractor will make every reasonable effort to resolve disputes the **END USER** in accord with the law and venue rules of the state of purchase. **Contractor** shall immediately notify **H-GAC** of such disputes.

ARTICLE 6: SALES AND ORDER PROCESSING CHARGE

SAMPLE

Contractor shall sell its products to **END USERS** based on the pricing and terms of this Agreement. **H-GAC** will invoice **Contractor** for the applicable order processing charge when H-GAC receives notification of an END USER order. **Contractor shall remit to H-GAC** the full amount of the applicable order processing charge, after delivery of any product or service and subsequent END USER acceptance**.** Payment of the Order Processing Charge shall be remitted from Contractor to H-GAC, within thirty (30) calendar days or ten (10) business days after receipt of an END USER's payment, whichever comes first, notwithstanding Contractor's receipt of invoice. For sales made by **Contractor** based on this Agreement**,** including sales to entities without Interlocal Agreements, **Contractor** shall pay the applicable order processing charges to **H-GAC.** Further, **Contractor** agrees to encourage entities who are not members of H-GAC**'s** Cooperative Purchasing Program to execute an **H-GAC** Interlocal Agreement. **H-GAC** reserves the right to take appropriate actions including, but not limited to, Agreement termination if **Contractor** fails to promptly remit the appropriate order processing charge to H-GAC. In no event shall **H-GAC** have any liability to **Contractor** for any goods or services an **END USER** procures from **Contractor.** At all times, **Contractor** shall remain liable to pay to **H-GAC** any order processing charges on any portion of the Agreement actually performed**,** and for which compensation was received by **Contractor.**

ARTICLE 7: LIQUIDATED DAMAGES

Contractor and H-GAC agree that Contractor shall cooperate with the END USER at the time an END USER purchase order is placed, to determine terms for any liquidated damages.

ARTICLE 8: INSURANCE

Unless otherwise stipulated in Section B of the Bid/Proposal Specifications, **Contractor** must have the following insurance and coverage minimums:

a. **General liability** insurance with a Single Occurrence limit of at least $1,000,000.00, and a General

Aggregate limit of at least two times the Single Occurrence limit.

Product liability insurance with a Single Occurrence limit of at least $1,000,000.00, and a General Aggregate limit of at least two times the Single Occurrence limit for all Products except Automotive Fire Apparatus. For Automotive Fire Apparatus, see Section B of the Bid/Proposal Specifications.

Property Damage or Destruction insurance is required for coverage of **End User** owned equipment while in **Contractor's** possession, custody or control. The minimum Single Occurrence limit is $500,000.00 and the General Aggregate limit must be at least two times the Single Occurrence limit. This insurance may be carried in several ways, e.g. under an Inland Marine policy, as art of Automobile coverage, or under a Garage Keepers policy. In any event, this coverage must be specifically and clearly listed on insurance certificate(s) submitted to **H-GAC**.

b. Insurance coverage shall be in effect for the length of any contract made pursuant to the Bid/Proposal, and for any extensions thereof, plus the number of days/months required to *deliver* any outstanding order after the close of the contract period.

c. Original Insurance Certificates must be furnished to **H-GAC** on request, showing **Contractor** as the insured and showing coverage and limits for the insurances listed above.

d. If any Product(s) or Service(s) will be provided by parties other than **Contractor**, all such parties are required to carry the minimum insurance coverages specified herein, and if requested by **H-GAC**, a separate insurance certificate must be submitted for each such party.

e. **H-GAC** reserves the right to contact insurance underwriters to confirm policy and certificate issuance and document accuracy.

SAMPLE

ARTICLE 9: PERFORMANCE AND PAYMENT BONDS FOR INDIVIDUAL ORDERS

H-GAC's contractual requirements DO NOT include a Performance & Payment Bond (PPB); therefore, Contractor shall offer pricing that reflects this cost savings. **Contractor** shall remain prepared to offer a PPB to cover any order if so requested by the **END USER**. **Contractor** shall quote a price to **END USER** for provision of any requested PPB, and agrees to furnish the PPB within ten business (10) days of receipt of **END USER's** purchase order.

ARTICLE 10: CHANGE OF STATUS

Contractor shall immediately notify **H-GAC,** in writing, of **ANY** change in ownership, control, dealership/franchisee status, Motor Vehicle license status, or name. Contractor shall offer written guidance to advise H-GAC if this Agreement shall be affected in any way by such change. **H-GAC** shall have the right to determine whether or not such change is acceptable, and to determine what action shall be warranted, up to and including cancellation of Agreement.

ARTICLE 11: TEXAS MOTOR VEHICLE BOARD LICENSING

All that deal in motor vehicles shall maintain current licenses that are required by the Texas Motor Vehicle Commission Code. If at any time during this Agreement term, any required **Contractor** license is denied, revoked, or not renewed, **Contractor** shall be in default of this Agreement, unless the Texas Motor Vehicle

Board issues a stay or waiver. Contractor shall promptly provide copies of all current applicable Texas Motor Vehicle Board documentation to **H-GAC** upon request.

SAMPLE

GENERAL PROVISIONS

This Agreement is made and entered into, by and between the Houston-Galveston Area Council hereinafter referred to as H-GAC having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027 and _____., hereinafter referred to as the Contractor, having its principal place of business at _____.

WITNESSETH:

WHEREAS, H-GAC hereby engages the Contractor to perform certain services in accordance with the specifications of the Agreement; and

WHEREAS, the Contractor has agreed to perform such services in accordance with the specifications of the Agreement;

NOW, THEREFORE, H-GAC and the Contractor do hereby agree as follows:

ARTICLE 1: LEGAL AUTHORITY
The Contractor warrants and assures H-GAC that it possesses adequate legal authority to enter into this Agreement. The Contractor's governing body, where applicable, has authorized the signatory official(s) to enter into this Agreement and bind the Contractor to the terms of this Agreement and any subsequent amendments hereto.

SAMPLE

ARTICLE 2: APPLICABLE LAWS
The Contractor agrees to conduct all activities under this Agreement in accordance with all applicable rules, regulations, directives, standards, ordinances, and laws, in effect or promulgated during the term of this Agreement, including without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Contractor shall furnish H-GAC with satisfactory proof of its compliance therewith.

ARTICLE 3: INDEPENDENT CONTRACTOR
The execution of this Agreement and the rendering of services prescribed by this Agreement do not change the independent status of H-GAC or the Contractor. No provision of this Agreement or act of H-GAC in performance of the Agreement shall be construed as making the Contractor the agent, servant or employee of H-GAC, the State of Texas or the United States Government. Employees of the Contractor are subject to the exclusive control and supervision of the Contractor. The Contractor is solely responsible for employee related disputes and discrepancies, including employee payrolls and any claims arising therefrom.

ARTICLE 4: WHOLE AGREEMENT
The General Provisions, Special Provisions, and Attachments, as provided herein, constitute the complete Agreement ("Agreement") between the parties hereto, and supersede any and all oral and written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Agreement cannot be modified without written consent of the parties.

ARTICLE 5: SCOPE OF SERVICES

The services to be performed by the Contractor are outlined in an Attachment to this Agreement.

ARTICLE 6: PERFORMANCE PERIOD

This Agreement shall be performed during the period which begins _____ and ends _____. All services under this Agreement must be rendered within this performance period, unless directly specified under a written change or extension provisioned under Article 15, which shall be fully executed by both parties to this Agreement.

ARTICLE 7: PAYMENT OR FUNDING

Payment provisions under this Agreement are outlined in the Special Provisions.

ARTICLE 8: REPORTING REQUIREMENTS

If the Contractor fails to submit to H-GAC in a timely and satisfactory manner any report required by this Agreement, or otherwise fails to satisfactorily render performances hereunder, H-GAC may terminate this agreement with notice as identified in Article 16 of these General Provisions. H-GAC has final determination of the adequacy of performance and reporting by Contractor. Termination of this agreement for failure to perform may affect Contractor's ability to participate in future opportunities with H-GAC. The Contractor's failure to timely submit any report may also be considered cause for termination of this Agreement.

Any additional reporting requirements shall be set forth in the Special Provisions of this Agreement.

ARTICLE 9: INSURANCE

Contractor shall maintain insurance coverage for work performed or services rendered under this Agreement as outlined and defined in the attached Special Provisions.

SAMPLE

ARTICLE 10: SUBCONTRACTS and ASSIGNMENTS

Except as may be set forth in the Special Provisions, the Contractor agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Agreement or any right, title, obligation or interest it may have therein to any third party without prior written approval of H-GAC. The Contractor acknowledges that H-GAC is not liable to any subcontractor or assignee of the Contractor. The Contractor shall ensure that the performance rendered under all subcontracts shall result in compliance with all the terms and provisions of this Agreement as if the performance rendered was rendered by the Contractor. Contractor shall give all required notices, and comply with all laws and regulations applicable to furnishing and performance of the work. Except where otherwise expressly required by applicable law or regulation, H-GAC shall not be responsible for monitoring Contractor's compliance, or that of Contractor's subcontractors, with any laws or regulations.

ARTICLE 11: AUDIT

Notwithstanding any other audit requirement, H-GAC reserves the right to conduct or cause to be conducted an independent audit of any transaction under this Agreement, such audit may be performed by the H-GAC local government audit staff, a certified public accountant firm, or other auditors designated by H-GAC and will be conducted in accordance with applicable professional standards and practices. The Contractor understands and agrees that the Contractor shall be liable to the H-GAC for any findings that result in monetary obligations to H-GAC.

ARTICLE 12: EXAMINATION OF RECORDS

The Contractor shall maintain during the course of the work complete and accurate records of all of the Contractor's costs and documentation of items which are chargeable to H-GAC under this Agreement. H-GAC, through its staff or designated public accounting firm, the State of Texas, and United States Government, shall have the right at any reasonable time to inspect, copy and audit those records on or

off the premises by authorized representatives of its own or any public accounting firm selected by H-GAC. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. Failure to provide access to records may be cause for termination of the Agreement. The records to be thus maintained and retained by the Contractor shall include (without limitation): (1) personnel and payroll records, including social security numbers and labor classifications, accounting for total time distribution of the Contractor's employees working full or part time on the work, as well as cancelled payroll checks, signed receipts for payroll payments in cash, or other evidence of disbursement of payroll payments; (2) invoices for purchases, receiving and issuing documents, and all other unit inventory records for the Contractor's stocks or capital items; and (3) paid invoices and cancelled checks for materials purchased and for subcontractors' and any other third parties' charges.

The Contractor further agrees that the examination of records outlined in this article shall be included in all subcontractor or third-party agreements.

ARTICLE 13: RETENTION OF RECORDS

The Contractor and its subcontractors shall maintain all records pertinent to this Agreement, and all other financial, statistical, property, participant records, and supporting documentation for a period of no less than seven (7) years from the later of the date of acceptance of the final payment or until all audit findings have been resolved. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the retention period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the seven (7) years, whichever is later, and until any outstanding litigation, audit, or claim has been fully resolved.

SAMPLE

ARTICLE 14: CHANGES AND AMENDMENTS

A. Any alterations, additions, or deletions to the terms of this Agreement, which are required by changes in federal or state law or by regulations, are automatically incorporated without written amendment hereto, and shall become effective on the date designated by such law or by regulation.
B. To ensure the legal and effective performance of this Agreement, both parties agree that any amendment that affects the performance under this Agreement must be mutually agreed upon and that all such amendments must be in writing. After a period of no less than 30 days subsequent to written notice, unless sooner implementation is required by law, such amendments shall have the effect of qualifying the terms of this Agreement and shall be binding upon the parties as if written herein.

ARTICLE 15: TERMINATION PROCEDURES

The Contractor acknowledges that this Agreement may be terminated for Convenience or Default.

A. *Convenience*

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

   The Contractor may cancel or terminate this Agreement upon submission of thirty (30) days written notice, presented to H-GAC via certified mail. The Contractor may not give notice of cancellation after it has received notice of default from H-GAC.
B. *Default*

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

(1) lf 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 Agreement for any reason whatsoever, or so fails to make progress or otherwise violates the Agreements that completion of services herein specified within the Agreement term is significantly endangered, and in either of these two instances does not cure such failure within a period often (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.

ARTICLE 16: SEVERABILITY

H-GAC and Contractor agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

ARTICLE 17: FORCE MAJEURE

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

SAMPLE

ARTICLE 18: CONFLICT OF INTEREST

No officer, member or employee of the Contractor or 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 Agreement, shall participate in any decision relating to this Agreement which affects his or her personal interest, or shall have any personal or pecuniary interest, direct or indirect, in this Agreement.

ARTICLE 19: FEDERAL COMPLIANCE

Contractor agrees to comply with all federal statutes relating to nondiscrimination, labor standards, and environmental compliance. Additionally, for work to be performed under the Agreement or subcontract thereof, including procurement of materials or leases of equipment, Contractor shall notify each potential subcontractor or supplier of the Contractor's federal compliance obligations. These may 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) the Fair Labor Standards Act of 1938 (29 USC 676 et. seq.), (d) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990; (e) the Age Discrimination in Employment Act of 1967 (29 USC 621 et. seq.) and the Age Discrimination Act of 1974, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (f) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (g) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (h) §§ 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; (i) 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; (j) any other nondiscrimination provisions in any specific statute(s)

applicable to any Federal funding for this Agreement; (k) the requirements of any other nondiscrimination statute(s) which may apply to this Agreement; (l) applicable provisions of the Clean Air Act (42 U.S.C. §7401 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251 et seq.), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the Environmental Protection Agency regulations at 40 CPR Part 15; (m) applicable provisions of the Davis- Bacon Act (40 U.S.C. 276a - 276a-7), the Copeland Act (40 U.S.C. 276c), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332), as set forth in Department of Labor Regulations at 20 CPR 5.5a; (n) the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

ARTICLE 20: CRIMINAL PROVISIONS AND SANCTIONS

The Contractor agrees to perform the Agreement in conformance with safeguards against fraud and abuse as set forth by the H-GAC, the State of Texas, and the acts and regulations of any related state or federal agency. The Contractor agrees to promptly notify H-GAC of any actual or suspected fraud, abuse, or other criminal activity through the filing of a written report within twenty-four (24) hours of knowledge thereof. Contractor shall notify H-GAC of any accident or incident requiring medical attention arising from its activities under this Agreement within twenty-four (24) hours of such occurrence. Theft or willful damage to property on loan to the Contractor from H-GAC, if any, shall be reported to local law enforcement agencies and H-GAC within two (2) hours of discovery of any such act.

The Contractor further agrees to cooperate fully with H-GAC, local law enforcement agencies, the State of Texas, the Federal Bureau of Investigation and any other duly authorized investigative unit, in carrying out a full investigation of all such incidents.

SAMPLE

The Contractor shall notify H-GAC of the threat of lawsuit or of any actual suit filed against the Contractor pertaining to this Agreement or which would adversely affect the Contractor's ability to perform services under this Agreement.

ARTICLE 21: INDEMNIFICATION AND RECOVERY

H-GAC's liability under this Agreement, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to its order processing charge. In no event will H-GAC be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. Contractor agrees, to the extent permitted by law, to defend and hold harmless H-GAC, its board members, officers, agents, officials, employees and indemnities from any and all claims, costs, expenses (including reasonable attorney fees), actions, causes of action, judgements, and liens arising as a result of Contractor's negligent act or omission under this Agreement. Contractor shall notifiy H-GAC of the threat of lawsuit or of any actual suit filed against Contractor relating to this Agreement.

ARTICLE 22: LIMITATION OF CONTRACTOR'S LIABILITY

Except as specified in any separate writing between the Contractor and an END USER, Contractor's total liability under this Agreement, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, but excluding its obligation to indemnify H-GAC, is limited to the price of the particular products/services sold hereunder, and Contractor agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. In no event will Contractor be liable for any loss of use, loss of time, inconvenience, commercial loss, loss of profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. Contractor understands and agrees that it shall be liable to repay and shall repay upon demand to

END USER any amounts determined by H-GAC, its independent auditors, or any agency of State or Federal government to have been paid in violation of the terms of this Agreement.

ARTICLE 23: TITLES NOT RESTRICTIVE

The titles assigned to the various Articles of this Agreement are for convenience only. Titles shall not be considered restrictive of the subject matter of any Article, or part of this Agreement.

ARTICLE 24: JOINT WORK PRODUCT

This Agreement is the joint work product of H-GAC and the Contractor. This Agreement has been negotiated by H-GAC and the Contractor and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against any party.

ARTICLE 25: DISPUTES

All disputes concerning questions of fact or of law arising under this Agreement, which are not addressed within the Whole Agreement as defined pursuant to Article 4 hereof, shall be decided by the Executive Director of H-GAC or his designee, who shall reduce his decision to writing and provide notice thereof to the Contractor. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, the Contractor requests a rehearing from the Executive Director of H-GAC. In connection with any rehearing under this Article, the Contractor shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. The Contractor may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Agreement and in accordance with H- GAC's final decision.

SAMPLE

ARTICLE 26: CHOICE OF LAW: VENUE

This Agreement shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with the Agreement shall lie exclusively in Harris County, Texas. Disputes between END USER and Contractor are to be resolved in accordance with the law and venue rules of the state of purchase. Contractor shall immediately notify H-GAC of such disputes.

ARTICLE 27: ORDER OF PRIORITY

In the case of any conflict between or within this Agreement, the following order of priority shall be utilized: 1) General Provisions, 2) Special Provisions, 3) Scope of Work, and, 4) Other Attachments.

SIGNATURES:
H-GAC and the Contractor have read, agreed, and executed the whole Agreement as of the date first written above, as accepted by:

_____

Signature

Name

Title

Date

H-GAC

Signature

Name Chuck Wemple

Title Executive Director

Date

SAMPLE

Form **W-9**
(Rev. December 2014)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification; check only **one** of the following seven boxes:
☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate
☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶
Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner.
☐ Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):
Exempt payee code (if any)
Exemption from FATCA reporting code (if any)
(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

6 City, state, and ZIP code

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number
☐☐☐ – ☐☐ – ☐☐☐☐

or

Employer identification number
☐☐ – ☐☐☐☐☐☐☐

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here **Signature of U.S. person ▶** **Date ▶**

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at *www.irs.gov/fw9*.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding?* on page 2.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 **Name of vendor who has a business relationship with local governmental entity.**

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 **Name of local government officer about whom the information is being disclosed.**

Name of Officer

4 **Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

5 **Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

***

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than $100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

CERTIFICATE OF INTERESTED PARTIES – FORM 1295

Certificate of Interested Parties (Form 1295 – must be filled out electronically with the Texas Ethics Commission's online filing application, printed out, signed, notarized, and attached to proposal in the response - Section TAB A)

H-GAC is required to comply with House Bill 1295, which amended the Texas Government Code by adding Section 2252.908, Disclosure of Interested Parties. Section 2252.908 prohibits H-GAC from entering into a contract resulting from this RFP with a business entity unless the business entity submits a Disclosure of Interested Parties (Form 1295) to H-GAC at the time business entity submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Texas Ethics Commission. The following **definitions** apply:

(1) ***"Business Entity"*** means an entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation. TEX. GOV'T CODE § 2252.908(1).

(2) ***"Interested Party"*** means a person:
   a) who has a controlling interest in a business entity with whom H-GAC contracts; or
   b) who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity. TEX. GOV'T CODE § 2252.908(3).

(3) ***"Controlling interest"*** means:
   a) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent;
   b) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or
   c) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers. *Subsection (c) does not apply to an officer of a publicly held business entity or its wholly owned subsidiaries.* TEX. ETHICS COMM. RULE 46.3(c).

(4) ***"Intermediary"*** means a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:
   a) receives compensation from the business entity for the person's participation;
   b) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and
   c) is not an employee of the business entity. TEX. ETHICS COMM. RULE 46.3(e).

As a "business entity," all vendors must:

(1) **complete Form 1295 electronically** with the Texas Ethics Commission using the online filing application, which can be found at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
   - **All vendors must complete Form 1295, even if no interested parties exist**
   - In Section 2, insert "Houston-Galveston Area Council"
   - In Section 3, insert the H-GAC RFP # for this proposal

(2) **print a copy of the completed form** (make sure that it has a computer-generated certification number in the "Office Use Only" box)

(3) have an authorized agent of the business entity **sign the form**

(4) **notarize the form**

(5) **submit** the completed, signed, notarized Form 1295, with the certification of filing, by **attaching the form to your proposal in Section TAB A**

H-GAC must acknowledge the receipt of the filed Form 1295 by notifying the Texas Ethics Commission of the receipt of the filed Form 1295 no later than the 30th day after receipt by H-GAC. After H-GAC acknowledges the Form 1295, the Texas Ethics Commission will post the completed Form 1295 to its website with seven business days after receiving notice from H-GAC.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

OFFICE USE ONLY

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

Must file online at www.ethics.state.tx.us/File

5 Check only if there is NO Interested Party. ☐

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

_____
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day of _____, 20 _____, to certify which, witness my hand and seal of office.

_____
Signature of officer administering oath | Printed name of officer administering oath | Title of officer administering oath

ADD ADDITIONAL PAGES AS NECESSARY

House Bill 89 Verification Form

Prohibition on Contracts with Companies Boycotting Israel

The 85th Texas Legislature approved new legislation, effective Sept. 1, 2017, which amends Texas Local Government Code Section 1. Subtitle F, Title 10, Government Code by adding Chapter 2270 which states that a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

1) does not boycott Israel; and
2) will not boycott Israel during the term of the contract

Pursuant to Section 2270.001, Texas Government Code:

1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.

I, (authorized official) _____, do hereby depose and verify the truthfulness and accuracy of the contents of the statements submitted on this certification under the provisions of Subtitle F, Title 10, Government Code Chapter 2270 and that the company named below:

1) does not boycott Israel currently; and
2) will not boycott Israel during the term of the contract; and
3) is not currently listed on the State of Texas Comptroller's Companies that Boycott Israel List located at https://comptroller.texas.gov/purchasing/publications/divestment.php

_____

Company Name

_____

Signature of Authorized Official

_____

Title of Authorized Official Date

CONTRACTOR CONTACT INFORMATION

ATTENTION Houston-Galveston Area Council (H-GAC) Contractor: The following information is needed to communicate with your company concerning contract matters which may arise. To expedite the process, we ask that you provide the information requested below. During the term of this contract, notify H-GAC in writing of any changes to this information by emailing updates to: *cpcontractfax@h-gac.com*

Section I

CONTRACTOR:	**CONTRACT #:**
Purchase Order:	**Invoice:**
Contact Name:	Contact Name:
Address:	Address:
City *State* *Zip Code*	*City* *State* *Zip Code*
Telephone No.:	Telephone No.#
Fax No.	Fax No.#
Email Address:	Email Address:

Section II

CONTRACT INFORMATION:

Indicate the person (s) authorized to: sign contracts, request contract price increases, or other contract-related documents. A copy of your corporate resolution may be acceptable for Section II.

1.Printed Name of Signatory:	2.Printed Name of Signatory:
Corporate Title:	Corporate Title:
Tel. No.:	Tel. No.:
Fax No.:	Fax No.:
Email:	Email:

Section III

SALES CONTACT (Person who end users will contact for product information and pricing quotes)

Contact Name:	Title:
Address:	
Street	City State Zip
Telephone No.:	Fax No.:
Mobile No.: (optional)	Email: