



COOPERATIVE PURCHASING PROGRAM
 Houston-Galveston Area Council of Governments
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 Phone: 800-926-0234 Fax: 713-993-4548
www.hgacbuy.org

INVITATION TO SUBMIT COMPETITIVE:	<input type="checkbox"/> BIDS	<input checked="" type="checkbox"/> PROPOSALS
INVITATION NO.:	DR09-17	ISSUE DATE: June 15, 2017
CATEGORY: Disaster Debris Clearance and Removal Services		

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. These products/services may be purchased by any of more than 5,400 member local governments, districts, agencies in 44 states across the nation.

Responses must be submitted in an original and one (1) copy, and shall be subject to the terms, conditions, requirements and specifications detailed in the documents comprising this Invitation. Responses are scheduled to be opened publicly at H-GAC offices on the date indicated. For Bid Invitations, responses will be available for public review until 4:00 p.m. CT that day, and on subsequent days by appointment only. Any Responses submitted later than 1:00 p.m. on the due date will be returned unopened to the bidder/proposer.

PROCUREMENT SCHEDULE & DETAILS

DRAFT SPECIFICATION / INVITATION:	May 24, 2017
PRE-BID/PROPOSAL CONFERENCE:	June 13, 2017 @ 9:00 a.m. CT; Conference Room B
FINAL SPECIFICATION / INVITATION:	June 15, 2017
BID/PROPOSAL RESPONSES DUE:	July 11, 2017 @ 1:00 p.m. CT; H-GAC Clock
PUBLIC RESPONSE OPENING:	July 11, 2017 @ 2:00 p.m. CT; H-GAC Conference Rm A
RECOMMENDATIONS TO BOARD:	August 15, 2017
CONTRACT START DATE & TERM:	September 1, 2017 through August 31, 2020
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
- SECTION B** - Product/Service Specific Requirements & Specifications (Final)
- SECTION C** - **HGACBuy** FORMS (Final)
- SECTION D** - Pro-Forma (Sample) Contract

This procurement conforms to government requirements for Competitive Procurement.

LABELING OF SEALED RESPONSE PACKAGE

IMPORTANT:

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



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



SECTION A
GENERAL TERMS & CONDITIONS
FOR BIDS AND PROPOSALS

INVITATION No. DR09-17

DESCRIPTION: Disaster Debris Clearance and Removal Services

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1. INTRODUCTION

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

2. DEFINITIONS, ABBREVIATIONS & ACRONYMS

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

Definitions and Abbreviations:

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

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

Approved. Acceptable to the "authority having jurisdiction."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Must. A term indicating a mandatory requirement.

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

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

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

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

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

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

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

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

Quotation. See "Contract Pricing Worksheet".

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

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

Shall. A term indicating a mandatory requirement or action.

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

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

Acronyms:

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

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

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

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

DOJ = U.S. Department Of Justice
DOT = U.S. Department Of Transportation
EPA = U.S. Environmental Protection Agency
FAA = Federal Aviation Administration
FMVSS = U.S. Federal Motor Vehicle Safety Standards
H-GAC = Houston-Galveston Area Council of Governments
IEEE = Institute of Electrical and Electronics Engineers
MVD = Motor Vehicle Division of Texas Department of Transportation
NFPA = National Fire Protection Association
NHTSA = National Highway Traffic Safety Administration
NIOSH = National Institute For Occupational Safety And Health
NIST = National Institute of Standards and Technology
NTEA = National Truck Equipment Association
OSHA = U.S. Occupational Safety and Health Administration
RRC = Railroad Commission of Texas
SAE = Society of Automotive Engineers
TBPC = Texas Building and Procurement Commission (formerly GSC)
TxDOT = Texas Department Of Transportation
UL = Underwriter's Laboratories Inc.
VTCS = Vernon's Texas Civil Statutes

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, and to insure that any response submitted complies in every respect with all requirements.

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

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 **Offerors** that may be competing for this procurement.

No Financial Interest or Other Conflict

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

Debarment and Suspension Status

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

Insurance Coverages

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

Licensing & Permits

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

12. HISTORICALLY UNDERUTILIZED BUSINESS (HUB) PARTICIPATION

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

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.

<p>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</p>

15. INTENT AND SCOPE OF SPECIFICATIONS

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

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 on any Contract Pricing Worksheet or other quote presented to the **End User**.
- c. The estimated delivery time after receipt of order (ARO), inclusive of Saturdays, Sundays and holidays, for all Products offered must be stated in the Response. Actual delivery for any particular order must be confirmed with **End User** at time of order placement, and must be stated clearly on the Contract Pricing Worksheet.
- d. **Contractor** shall be responsible for delivery and Acceptance according to the requirements of the Contract and the Purchase Order.
- e. **Contractor** shall advise **End User** prior to making any shipment/delivery, and shall make such shipment/delivery in accordance with **End User's** requirements, providing only that such arrangements do not contravene any requirement of the **H-GAC** contract unless agreed to by **Contractor**.
- f. The execution of all required tests, certifications and/or licensing, and costs thereof, shall be the responsibility of **Contractor**. Upon request by **End User** or **H-GAC**, **Contractor** shall provide any documentation or certification related to such tests, certifications or licensing.

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 insure that printed **FORMS** are clear and legible. Handwritten and illegible entries may be rejected. **Offeror's** printed, stamped or typed name shall appear on every **FORM** submitted in the Response.
- d. The entire response submission shall also be submitted on electronic media, including all required **H-GAC FORMS**. **Offeror** is strongly advised to make and work with copies of the original electronic **FORMS**. The originals can then be used to make additional electronic or printed copies of the blank **FORMS**. Signatures are not required on the electronic **FORMS**.
- e. The Response shall include ample written evidence, in the form of technical specifications, cut/tear sheets, brochures, pictures, drawings, etc., to demonstrate that all specifications herein have been met and/or exceeded.
- f. The Response shall include, in any format desired, an overview of the Service Organization which will support Products sold under any **H-GAC** contract. The overview must include facility locations, phone numbers and Service Manager names, as well as the following:
 - The procedure to be used by an **End User** requiring repairs.
 - Typical turn-around time on repairs.
 - Service Department days and hours of operation.
 - Number of qualified / factory trained service personnel normally on hand.
 - Description of the parts inventory on hand.
 - Training services, facilities and personnel available.
- g. Responses shall be enclosed in a sealed package(s) addressed to the Houston-Galveston Area Council, Cooperative Purchasing. The following information shall be stated on the exterior of the package(s):
 - Name and address of **Offeror**.
 - Date and hour of public response opening.
 - Bid/Proposal Invitation number.
 - The statement: "**SEALED BID/PROPOSAL, DO NOT OPEN IN MAIL ROOM**".**H-GAC** shall not be responsible for any Response not properly labeled.
- h. Submission of a COMPLETE Response by telegraphic or electronic transmission is not acceptable. However, Responses may be modified by telegraphic or electronic notice if such notice is received prior to the deadline for submission.
- i. Samples, when required, shall be submitted within the time specified and at no expense to **H-GAC**. If not destroyed or consumed during testing, samples will be returned upon request at **Offeror's** expense.
- j. **Offeror** shall provide firm contract pricing for all Products and Options being offered.
- k. If applicable, responses shall include copies of all current licensing which may be required by the Texas Motor Vehicle Division for execution of sales pursuant to any contract with **H-GAC**.
- l. Due to the complexity of responses and to aid in evaluation, the Response should contain ALL required information in tabbed sections as detailed below. Omission of any required FORM or information will be sufficient grounds for H-GAC to consider your response to be non-compliant.
- 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.

- 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.)
- **Form W-9 – Request for Taxpayer Identification Number and Certification:** Should be completed by each party to the response.

Third Section:

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

Fourth Section:

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

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

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.

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 including Offeror's documented previous contract performance as an HGACBuy contractor.
- 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 thirty (45) calendar days after presentation by H-GAC. If a contract is not executed within thirty (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 purchase 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 its sole discretion elect to make a contract award to the next low offeror for the item, or take any other action deemed by **H-GAC** to be in the best interests of **End Users**, at its sole discretion.
- b. If a manufacturer makes any change in a contracted item which does not affect the contract price, Contractor shall advise **H-GAC** of the details. If the 'new' item is equal to or better than the originally contracted item, the 'new' item shall be approved as a replacement. Otherwise **H-GAC** may allow or reject the change, or take any other action deemed by **H-GAC** to be in the best interests of **End Users**, at its sole discretion. If the change is rejected there will be no penalty to Contractor.
- c. If a manufacturer makes any kind of change in a contracted item which affects the contract price, Contractor shall advise **H-GAC** of the details. **H-GAC** may allow or reject the change at its sole discretion. If the change is rejected there will be no penalty to Contractor. However, **H-GAC** may elect to make a contract award to the next low offeror for the item, or take any other action deemed by **H-GAC** to be in the best interests of **End Users**, at its sole discretion.
- d. In the case of specifically identified catalogs or price sheets which have been contracted as base bid items or as published options, routine published changes to products and pricing shall be automatically incorporated into the contract. However, **Contractor** must still provide thirty (30) calendar days written notice and an explanation of the changes to products and pricing. **H-GAC** will respond with written approval.

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

Expedited Resolution

The Procurement Administrator or Department 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 COO of the resolution with specifics on each point addressed in the original complaint.

If the Procurement Administrator or Departmental Director is not successful in resolving the allegations, the complaint along with the comments will be forwarded to the COO immediately. The COO 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 Operating 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**.

<p>End of Section A GENERAL TERMS & CONDITIONS</p>
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SECTION B – PRODUCT/SERVICE SPECIFIC & RESPONSE REQUIREMENTS

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1. PURPOSE

HGACBuy, the Cooperative Purchasing Program of the **Houston-Galveston Area Council of Governments (H-GAC)** is issuing this Request for Proposal (RFP) for the provision of Disaster Debris Clearance and Removal Services. Our intention is to establish a contract(s) with qualified providers who will furnish such services, under a three-year blanket contract, which will be made available to **H-GAC** or any of our 6000 + local government and qualified non-profit cooperative purchasing members (**End Users**) throughout the United States.

Our expectation is that **End Users** purchasing covered services through our Program will receive high quality services and work products that will be both more cost effective and provided in a timelier manner than if they did their own procurement.

Offeror understands and agrees that this RFP is being issued based on the potential needs of the members of **HGACBuy**, and that **H-GAC** makes no representation that any services/products may ever be purchased. **Offeror** further understands and agrees that any cost borne by **Offeror** which arises from the **Offerors** performance hereunder shall be at the sole risk and responsibility of **Offeror**.

For purposes of FEMA Public Assistance grant funding, the Contracting Entity will be the named Public Assistance Applicant or Sub-grantee. It is our intent to ensure that all work performed pursuant to this RFP is eligible for FEMA Public Assistance grant funding and performed in accordance with FEMA regulations, policies and guidance.

2. DEFINITIONS

Definitions of key terms used in this RFP are provided below.

2.1 Approved Final Disposal Site

2.1.1 A final disposal site approved in writing by the END USER.

2.2 Authorized Representative

2.2.1 END USER employees and/or contracted individuals designated by the END USER or END USER debris manager.

2.3 Cleanup Crew

2.3.1 A group of individuals or an individual employed by the OFFEROR to collect disaster debris.

2.4 Construction and Demolition (C&D) Debris

2.4.1 FEMA Publication 325 defines eligible C&D debris as damaged components of buildings and structures such as lumber/wood, gypsum wallboard, glass, metal, roofing material, tile, carpeting and floor coverings, window coverings, plastic pipe, concrete, fully cured asphalt, heating, ventilation and air conditioning systems and their components, light fixtures, small consumer appliances, equipment, furnishings and other residential contents that are a result of a disaster. (Note: This definition of C&D debris is for disaster recovery purposes and is not the same definition commonly used in other solid waste documents.) Current eligibility criteria include the following:

- a. Debris must be located within a designated area and be removed from an eligible applicant's improved property or right-of-way (ROW).
- b. Debris removal must be the legal responsibility of the applicant.
- c. Debris must be a result of a major disaster.

2.5 Debris

2.5.1 Items and materials broken, destroyed, or displaced by a natural or human-caused federally declared disaster. Examples of debris include but are not limited to trees, C&D debris, and personal property.

2.6 Debris Management Site (DMS)

2.6.1 A location to temporarily store, reduce, segregate, and/or process debris before it is hauled to a final disposal site. May also be referred to as a temporary debris storage and reduction site (TDSRS) or temporary debris staging and processing facility (TDSPF).

2.7 Debris Manager

2.7.1 The END USER will designate a Debris Manager, who will provide oversight for all phases of debris removal operations.

2.8 Debris Removal

2.8.1 Picking up debris and taking it to a DMS, composting facility, recycling facility, permitted landfill, or other reuse or end-use facility.

2.9 Demolition

2.9.1 Demolition is the act or process of reducing a structure, as defined by the State of Texas or local code, to a collapsed state. It contrasts with deconstruction, which is the taking down of a building while carefully preserving valuable elements for reuse.

2.10 Description of Designated Area

- 2.10.1 The designated area for debris removal is bounded by END USER limits and includes all public ROWs, easements, parks, and debris staging areas within the areas of the END USER. Debris clearance and removal on roadways in municipalities within the END USER'S limits may assign debris removal responsibilities to the OFFEROR. The OFFEROR will remove debris from municipal roadways at the direction of the END USER. The END USER may also authorize the OFFEROR to remove debris from NON-END USER roadways or other areas as directed in writing by the END USER.
- 2.10.2 All debris identified by the END USER shall be removed. The OFFEROR shall make up to two complete passes through the END USER'S limits, removing all debris along each ROW. The END USER may or may not require the OFFEROR to perform a third pass. Partial removal of debris piles is strictly prohibited. The OFFEROR shall not move from one designated area to another designated area without prior approval from the END USER or its representative. Any eligible debris (such as fallen trees) that extends onto the ROW from private property shall be cut at the point where it enters the ROW, and the part of the debris that lies within the ROW shall be removed. The OFFEROR shall not enter onto private property during the performance of this contract unless specifically authorized in writing by the END USER.
- 2.10.3 The OFFEROR shall deliver debris to disposal sites that have been permitted to receive disaster debris and will adhere to all State, Local, and Federal regulations.
- 2.10.4 Debris shall be reasonably compacted into the hauling vehicle. No limbs shall be allowed to protrude more than six (6) inches beyond the sides of the truck bed. Any debris extending above the top of the truck bed shall be secured in place to prevent it from falling off. Measures must be taken to prevent debris from blowing out of the hauling vehicle during transport to the disposal site.
- 2.10.5 All debris will be mechanically loaded. Hauling vehicles that are hand loaded or that require mechanical assistance for dumping will not be permitted to dump at DMS(s), unless approved in advance by the END USER.
- 2.10.6 Loose leaves and small debris in excess of one bushel basket shall be removed within the designated area. No debris shall be left on the road surface. No single piece of debris larger than six (6) inches in any dimension shall be left on-site. Hand crews and rakes will be required.
- 2.10.7 The OFFEROR will provide an on-site Project Manager to the END USER. The Project Manager shall provide the END USER with a telephone number at which the Project Manager can be reached throughout the project. The Project Manager will be expected to have daily meetings with END USER representatives. Daily meeting topics will include but will not be limited to volume of debris collected, completion progress, local coordination, and damage repairs. The END USER may adjust the frequency of meetings. The OFFEROR Project Manager must be available 24 hours-a-day, or as required by the END USER.
- 2.10.8 The END USER may provide the OFFEROR with potential DMS(s). The OFFEROR will be responsible for returning the DMS(s) to its original condition, abiding by all State and Federal environmental regulatory requirements.
- a. DMS locations to be determined within the END USER service request form.
 - b. Once DMS locations are identified, the OFFEROR will be provided with the address, GPS coordinates, and estimated acreage of each DMS.
 - c. Based on the severity of the disaster, the END USER may task the OFFEROR with locating additional sites available to be used as DMS(s).
 - d. The END USER does not warrant or guarantee the availability or use of any dump sites. The

OFFEROR must coordinate directly with owners of all final disposal sites. All final disposal sites must be approved in writing by the END USER. The OFFEROR will remain legally responsible for the handling, reduction, and final haul-out and disposal of all reduced and unreduced debris. DMS(s) operations and remediation must comply with all Local, State, and Federal safety and environmental standards. OFFEROR reduction, handling, disposal, and remediation operations must be approved in writing by the END USER.

- e. Payment for disposal costs (such as tipping fees) incurred by the OFFEROR at permitted disposal facilities, or other END USER-approved sites that meet Local, State, and Federal regulations for disposal, will be made at the cost incurred by the OFFEROR. The OFFEROR must furnish a copy of the invoice received by the disposal facility, all scale or load tickets issued by the disposal facility, and proof of OFFEROR payment to the disposal facility.

- 2.10.9 The OFFEROR shall conduct the work so as not to interfere with the disaster response and recovery activities of Federal, State, and Local governments or agencies, or of any public utilities.
- 2.10.10 The END USER reserves the right to inspect the DMS(s), verify quantities, and review operations at any time.
- 2.10.11 The OFFEROR shall be capable of assembling, directing, and managing a workforce that can be fully operational in debris management operations in a maximum of seventy-two (70) hours, or sooner depending on the extent of the disaster. Operations must begin within twenty-four (24) hours of notification by the END USER. Depending on the category of the event, the END USER may request immediate mobilization.
- 2.10.12 Debris management activities reimbursed through federal disaster programs may occur in areas protected by the Endangered Species Act. For END USERS, any project that requires a federal permit or receives federal funding is subject to Section 7. The OFFEROR and END USER will comply with the findings of the Section 7 consultation, if applicable.
- 2.10.13 Debris management activities reimbursed through federal disaster programs may occur in areas that are protected by the Texas Historical Commission (THC). The OFFEROR and END USER will coordinate with the SHPO when appropriate.

2.11 Disaster Specific Guidance (DSG)

- 2.11.1 DSG is a policy statement issued in response to a specific post-event situation or need in a state or region. Each DSG is issued a number and is generally referred to by its numerical identification.

2.12 Eligible

- 2.12.1 Eligible means qualifying for and meeting the most current stipulated requirements (at the time the written Notice to Proceed is issued and executed by the END USER to the OFFEROR) of the FEMA Public Assistance Grant Program, FEMA Publication 321, FEMA Publication 322, FEMA Publication 323, FEMA Publication 325, and all current FEMA fact sheets, guidance documents, and DSGs. Eligible also includes meeting any changes in definition, rules, or requirements regarding debris removal reimbursement as stipulated by FEMA during the course of a debris removal project.

2.13 Endangered Species Act

- 2.13.1 Section 7 of the Endangered Species Act, [16 U.S.C. § 1536\(a\)\(2\)](#), requires all Federal agencies to consult with the National Marine Fisheries Service (NMFS) for marine and anadromous species, or the United States Fish and Wildlife Service (FWS) for fresh-water and wildlife, if they are proposing

an action that may affect listed species or their designated habitat. "Action" is defined broadly to include funding, permitting, and other regulatory actions. (See [50 C.F.R. § 402.02](#).)

- 2.13.2 Each Federal agency is to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of a designated critical habitat. This is done through consultation. If such species may be present, the Local government must conduct a biological assessment (BA) to analyze the potential effects of the project on listed species and critical habitat in order to establish and justify an effect determination (assistance and coordination may be available from the State of Texas, especially with transportation projects). The Federal agency reviews the BA and, if it concludes that the project may adversely affect a listed species or its habitat, it prepares a biological opinion. The biological opinion may recommend reasonable and prudent alternatives to the proposed action to avoid jeopardizing or adversely modifying the habitat.

2.14 FEMA Publication 325 Debris Management Guide

- 2.14.1 This publication is specifically dedicated to the rules, regulations, and policies associated with the debris removal process. Familiarity with this publication and any revisions can help a Local government limit the amount of non-reimbursable expenses. The Debris Management Guide provides the framework for the debris removal process authorized by the Stafford Act, including the following:
- a. Eliminating immediate threats to lives, public health, and safety.
 - b. Eliminating immediate threats of significant damage to improved public or private property.
 - c. Ensuring the economic recovery of the affected community to the benefit of the community at large.

2.15 Grinding

- 2.15.1 Reduction of disaster-related vegetative debris through mechanical means into small pieces to be used as mulch or fuel. Grinding may also be referred to as chipping or mulching.

2.16 Hazardous Hanging Limbs

- 2.16.1 A limb that poses significant threat to the public. The current eligibility requirements for hazardous hangers according to FEMA Publication 325 are:
- a. The limb must be greater than two (2) inches in diameter.
 - b. The limb must be suspended in a tree and threatening a public use area.
 - c. The limb must be located on improved public property.

2.17 Hazardous Leaning Tree

- 2.17.1 A tree is considered hazardous and defined as an eligible leaner when the tree's present state is caused by a disaster, the tree poses a significant threat to the public, and the tree is six (6) inches in

diameter or greater as measured two (2) feet from the ground. The current eligibility requirements for leaning trees according to FEMA Publication 325 include:

- a. The tree has more than fifty (50) percent of the crown damaged or destroyed (requires written documentation from an arborist).
- b. The tree has a split trunk or broken branches that expose the heartwood.
- c. The tree has fallen or been uprooted within a public use area.
- d. The tree is leaning at an angle greater than thirty (30) degrees.

2.18 Hazardous Stump

2.18.1 A stump is defined as hazardous and eligible for reimbursement if all of the following criteria are met. The current eligibility requirements for hazardous hangers according to FEMA Publication 325 are:

- a. The stump has fifty (50) percent or more of the root ball exposed.
- b. The stump is greater than twenty-four (24) inches in diameter when measured twenty-four (24) inches from the ground.
- c. The stump is located on a public ROW.
- d. The stump poses an immediate threat to public health and safety.

2.19 Historic Preservation

2.19.1 In certain instances, debris operations may occur in designated areas (for example, DMS locations or private property) that are subject to historical preservation rules and regulations.

2.20 Household Hazardous Waste (HHW)

2.20.1 The Resource Conservation and Recovery Act (RCRA) defines hazardous waste as materials that are ignitable, reactive, toxic, corrosive, or meet other listed criteria. Examples of eligible HHW include items such as paints, cleaners, pesticides, etc. The eligibility criteria for HHW are as follows:

- a. HHW must be located within a designated area and be removed from an eligible applicant's improved property or ROW.
- b. HHW removal must be the legal responsibility of the applicant.
- c. HHW must be a result of a major disaster.

2.20.2 The collection of commercial disaster-related hazardous waste is generally not eligible for reimbursement. Commercial hazardous waste will only be collected by the OFFEROR with written authorization by the END USER. Hazardous waste must be disposed of in accordance with all rules and regulations of Local, State, and Federal regulatory agencies.

2.21 Monitor

2.21.1 Person that observes day-to-day operations of debris removal crews to ensure they are performing eligible work, meeting the END USER'S expectations and contractual requirements, and complying

with all applicable Federal, State, and Local regulations. May also be referred to as a field inspector.

2.22 Personal Protective Equipment (PPE)

2.22.1 Equipment worn to minimize exposure to a variety of hazards.

2.23 Recycling

2.23.1 The recovery or use of wastes as a raw material for making products of the same or different nature as the original product.

2.24 Refrigerant

2.24.1 Ozone-depleting compound that must be removed from white goods or other refrigerant-containing items prior to recycling or disposal.

2.25 Right-of-Entry (ROE)

2.25.1 As used by FEMA, the document by which a property owner confers to the END USER or its OFFEROR or the United States Army Corps of Engineers the right to enter onto private property for a specific purpose without committing trespass.

2.26 Right-of-Way (ROW)

2.26.1 The portions of land over which facilities such as highways, railroads, or power lines are built. It includes land on both sides of the facility up to the private property line.

2.27 Scale/Weigh Station

2.27.1 A scale used to weigh trucks as they enter and leave a landfill. The difference in weight determines the tonnage dumped and a tipping fee is charged accordingly. It also may be used to determine the quantity of debris picked up and hauled.

2.28 Tipping Fee

2.28.1 A fee charged by landfills or other waste management facilities based on the weight or volume of debris dumped. May also be referred to as a disposal fee.

2.29 Used Electronics

2.29.1 End-of-life electronics (typically televisions, computers, and related components) that have been damaged by the disaster. May also be referred to as e-waste.

2.30 Vegetative Debris

2.30.1 Damaged and disturbed trees, tree limbs, bushes, shrubs, brush, untreated lumber, and wood products.

2.30.2 Remains of standing trees that are clearly damaged beyond salvage.

2.31 White Goods

- 2.31.1 As outlined in FEMA Publication 325, eligible white goods are defined as discarded disaster-related household appliances such as refrigerators, freezers, air conditioners, heat pumps, ovens, ranges, washing machines, clothes dryers, and water heaters. White goods can contain ozone-depleting refrigerants, mercury, or compressor oils that the federal Clean Air Act prohibits from being released into the atmosphere. The Clean Air Act specifies that only qualified technicians can extract refrigerants from white goods before they can be recycled. The eligibility criteria for white goods are as follows:
- a. White goods must be located within a designated area and be removed from an eligible applicant's improved property or ROW.
 - b. White goods removal must be the legal responsibility of the applicant.
 - c. White goods must be a result of a major disaster.

3. SCOPE OF REQUIRED SERVICES

This RFP is intended to the services of a capable and experienced Offeror who can provide FEMA-compliant disaster debris removal services to End-Users for specific projects in their jurisdiction to efficiently remove varied volumes of disaster-generated debris from various sized areas in a timely and cost-effective manner and lawfully disposing of all debris. The **Offeror** must handle, properly dispose, contain and transport debris management activities in accordance with the applicable Federal, State and local regulations, as applicable, which may include the Federal Emergency Management Agency (FEMA), Federal Highway Administration (FHWA), Texas Department of Transportation (TxDOT), Texas Department of Health (TDH), Natural Resources Conservation Services (NRCS), Historical Preservation Office (SHPO), and the Texas Commission on Environmental Quality (TCEQ) or other regulations as determined by the **End-User's** needs.

The Offeror shall have the capacity to manage a major workforce with multiple SUB-OFFERORS and to cover the expenses of a major recovery prior to being paid by the END USER. Established management teams must be in place. The OFFEROR shall have the resources to provide the equipment and personnel necessary to cover a disaster.

It shall be the OFFEROR'S responsibility to load, transport, reduce, and properly dispose of all disaster-generated debris once the END USER issues a Notice to Proceed to the OFFEROR, unless otherwise directed in writing by the END USER.

Payment for disposal costs (such as tipping fees) incurred by the OFFEROR at an END USER-approved final disposal site that meet Local, State, and Federal regulations for disposal will be reimbursed by the END USER as a pass-through cost. Prior to reimbursement by the END USER, the OFFEROR must furnish an invoice in hard copy and electronic formats, all scale or load tickets issued by the disposal facility, and proof of OFFEROR payment to the disposal facility.

The Offeror shall have an excellent understanding of FEMA Project Worksheets and the documentation involved for the reimbursement from FEMA, FHWA, or other Federal Agencies, and the State relief programs to make the process of cost recovery efficient and accurate. The processes and documentation required will be in strict compliance with FEMA, FHWA, or Other Federal Agencies, and other State relief programs regulations regarding eligibility. Contracts must meet rules for Federal grants, as provided for in Title 44 Code of Federal Regulations (CFR) Part 13, (§13.36, Procurement) to 2 CFR 200 to be eligible for reimbursement under the Public Assistance Program. This scope of work may include, but is not limited, to: (Actual work will be determined by the End-User)

3.1 Emergency Road Clearance

Work shall consist of all labor, equipment, fuel, and miscellaneous costs necessary to clear and remove debris from END USER roadways and waterways to make them passable immediately following a declared disaster. All roadways designated by the END USER shall be clear and passable within seventy (70) working hours of the issuance of a Notice to Proceed from the END USER to conduct emergency roadway clearance work. The END USER may choose to extend the OFFEROR'S seventy (70)-hour limit through a written request. This may include roadways in municipalities within the END USER. Roadways will be cleared as directed by the END USER. The OFFEROR shall assist the END USER and its representatives in ensuring proper documentation of emergency road clearance activities by documenting the type of equipment and/or labor utilized (that is, certification), starting and ending times, and zones/areas cleared. Services performed under this Contract element will be compensated using a mutually agreed upon Hourly Labor and Equipment Price Schedule.

3.2 Right-of-Way (ROW) Vegetative Debris Removal

Work shall consist of all labor, equipment, fuel, traffic control costs, and other associated costs necessary to pick up and transport eligible disaster-related vegetative debris from the END USER ROW to an END USER-approved DMS or approved final disposal site in accordance with all Federal, State, and Local regulations.

- 3.2.1 Vegetative debris in the END USER ROW is defined as debris, resulting from a hurricane or other natural or human-caused disaster, that has been or will be placed along public ROWs, easements, END USER parks, alleys, END USER debris staging areas, and other areas as designated by the END USER.
- 3.2.2 Eligible vegetative debris that is piled in immediate proximity to the actual legal street ROW and that is accessible from the ROW line with loading equipment (that is, not behind a fence or physical obstacle) will be deemed to be on the ROW, and is to be removed.
- 3.2.3 The OFFEROR will remove vegetative debris as directed by the END USER.
- 3.2.4 All eligible debris will be removed from each location before proceeding to the next location, unless otherwise directed by the END USER or its authorized representative.
- 3.2.5 The OFFEROR must provide traffic control as conditions require or as directed by the END USER.
- 3.2.6 Entry onto private property for the removal of eligible vegetative debris will only be permitted when directed by the END USER or its authorized representative. The END USER will provide specific right-of-entry (ROE) legal and operational procedures.

3.3 ROW Construction and Demolition (C&D) Debris Removal

Work shall consist of all labor, equipment, fuel, traffic control costs, and other associated costs necessary to pick up and transport eligible C&D debris from the END USER ROW to an END USER-approved final disposal site in accordance with all Federal, State, and Local regulations.

- 3.3.1 C&D debris in the END USER ROW is defined as disaster generated debris that has been or will be placed along public ROW, easements, END USER parks, alleys, and END USER debris staging areas.
- 3.3.2 Eligible C&D debris that is piled in immediate proximity to the ROW and that is accessible from the ROW line with loading equipment (that is, not behind a fence or physical obstacle) will be deemed to be on the ROW, and is to be removed.
- 3.3.3 The OFFEROR will remove C&D debris from the ROW as directed by the END USER.
- 3.3.4 Once the debris removal vehicle has been issued a load ticket from the END USER'S authorized representative, the debris removal vehicle will proceed immediately to an END USER-approved final disposal site. The debris removal vehicle will not collect additional debris once a load ticket has been issued.
- 3.3.5 All eligible debris will be removed from each location before proceeding to the next location, unless otherwise directed by the END USER or its authorized representative.
- 3.3.6 The OFFEROR must provide traffic control as conditions require or as directed by the END USER.

- 3.3.7 Entry onto private property for the removal of eligible C&D debris will only be permitted when directed by the END USER or its authorized representative. The END USER will provide specific ROE legal and operational procedures.
- 3.3.8 C&D debris must be monitored for the collection, complete haul, and delivery at the approved final disposal site. The END USER or authorized representative will obtain the original copy of the disposal or scale ticket showing the inbound and outbound collection vehicle weights.

3.4 Demolition, Removal, Transport, and Disposal of Non-RACM Structures

Work shall consist of all labor, equipment, fuel, traffic control costs, and other associated costs necessary to decommission, demolish, and dispose of eligible non-regulated asbestos-containing material (non-RACM) structures on private property within the jurisdictional limits of the END USER. Under this service, work will include asbestos-containing material (ACM) testing, decommissioning, structural demolition, debris removal, and site remediation. Further, eligible debris generated from the demolition of non-RACM structures, as well as scattered C&D debris on private property, will be transported to an END USER-approved final disposal site in accordance with all Federal, State, and Local regulations.

- 3.4.1 Removal and transportation of demolished structures and scattered C&D debris on private property will be performed as identified by the END USER.
- 3.4.2 Entry onto private property will only be permitted when directed by the END USER. The END USER will provide specific ROE legal and operational procedures.
- 3.4.3 The OFFEROR is required to strictly adhere to all Local, State, and Federal regulations (such as obtaining demolition permits) for the demolition, handling, and transportation of non-RACM structures.
- 3.4.4 Decommissioning consists of the removal and disposal of all household hazardous waste (HHW), used electronics, white goods, and scrap tires from a non-RACM structure at a properly sanctioned facility in accordance with all applicable Federal, State, and Local regulations.
- 3.4.5 Any structurally unsound and unsafe structures will be identified and presented to the END USER for direction regarding decommissioning.
- 3.4.6 Removal and transportation of eligible non-RACM demolished structures and eligible scattered C&D debris on private property will be performed as directed in writing by the END USER'S authorized representative.
- 3.4.7 Once the debris removal vehicle has been issued a load ticket from the END USER'S authorized representative, the debris removal vehicle will proceed immediately to an END USER-approved final disposal site. The debris removal vehicle will not collect additional debris once a load ticket has been issued.
- 3.4.8 Entry onto private property for the removal of eligible C&D debris will only be permitted when directed in writing by the END USER or its authorized representative. The END USER will provide specific ROE legal and operational procedures for private property debris removal programs if requested.

3.5 Demolition, Removal, Transport, and Disposal of RACM Structures

Work shall consist of all labor, equipment, fuel, traffic control costs, and other associated costs necessary to decommission, demolish, and dispose of eligible RACM structures on private property within the jurisdictional limits of the END USER. Under this service, work will include ACM testing, decommissioning, structural demolition, debris removal, and site remediation. Further, eligible debris generated from the demolition of structures, as well as eligible scattered C&D debris on private property, will be transported to an END USER-approved final disposal site in accordance with all Federal, State, and Local regulations.

- 3.5.1 The OFFEROR is required to strictly adhere to all Local, State, and Federal regulatory requirements (such as obtaining demolition permits, burrito wrapping of debris, etc.) for the demolition, handling, and transportation of RACM structures.

- 3.5.2 Decommissioning consists of the removal and disposal of all HHW, e-waste, white goods, and scrap tires from an RACM structure at a properly sanctioned facility in accordance with all applicable Local, State, and Federal regulations.
- 3.5.3 Any structurally unsound and unsafe structures will be identified and presented to the END USER for direction regarding decommissioning.
- 3.5.4 Removal and transportation of eligible RACM demolished structures and eligible scattered C&D debris on private property will be performed as directed in writing by the END USER'S authorized representative.
- 3.5.5 Once the debris removal vehicle has been issued a load ticket from the END USER'S authorized representative, the debris removal vehicle will proceed immediately to an END USER-approved final disposal site that accepts RACM debris. The debris removal vehicle will not collect additional debris once a load ticket has been issued.
- 3.5.6 Entry onto private property for the removal of eligible C&D debris will only be permitted when directed in writing by the END USER or its authorized representative. The END USER will provide specific ROE legal and operational procedures for private property debris removal programs if requested.

3.6 DMS Management and Operations

Work shall consist of all labor, equipment, fuel, traffic control costs, and other associated costs necessary to manage and operate DMS(s) for the acceptance, management, segregation, staging, and reduction of disaster debris. Reduction methods must be approved by the END USER prior to commencement of reduction activities. DMS layouts and ingress and egress plans must be approved by the END USER.

- 3.6.1 Managing DMS location includes helping to obtain necessary Local, State, and Federal permits or approval and operating in accordance with all rules and regulations of Local, State, and Federal regulatory agencies, which may include but are not limited to the U.S. Environmental Protection Agency (EPA), Texas Commission on Environmental Quality (TCEQ), Texas Historical Commission (THC), or other State agencies. The OFFEROR shall also be responsible for all costs associated with third-party groundwater and soil testing.
- 3.6.2 Debris at the DMS(s) will be clearly segregated and managed independently by debris type (C&D, vegetative, white goods, and other scope of service items), program (ROW collection, private property debris removal, etc.), and END USER as outlined in Section 2.10 Description of Designated Area.
- 3.6.3 If the alternate tonnage price schedule of this RFP is used, the OFFEROR shall obtain, install, and operate scales for weighing incoming debris. Scales shall be installed and certified within five (5) business days of receiving the Notice to Proceed or written notice that the END USER intends to use the alternate tonnage price schedule of this RFP. The OFFEROR shall provide a sufficient number of scales meeting the END USER'S specifications to provide for the efficient delivery of waste streams without excessive wait times. The END USER shall decide what constitutes an excessive wait time. To the extent that the END USER determines that additional scales are required, certified scales must be operational within five (5) business days of the END USER'S written request, or other time frame as determined by END USER.
- 3.6.4 The OFFEROR is responsible for maintaining the DMS(s) approach and interior road(s) for all weather conditions for the entire period of debris hauling, including provision of crushed concrete for any roads that require stabilization for ingress and egress.
- 3.6.5 The OFFEROR is responsible for all associated costs necessary to provide DMS(s) traffic control (for example, traffic cones and staff with traffic flags).
- 3.6.6 The OFFEROR is responsible for all associated costs necessary to provide DMS(s) dust control and erosion control (for example, an operational water truck, silt fencing, and other best management practices).
- 3.6.7 The OFFEROR is responsible for providing twenty-four (24)-hour security at DMS(s).

- 3.6.8 The OFFEROR will only permit OFFEROR vehicles and others specifically authorized by the END USER or its authorized representative on DMS locations.
- 3.6.9 The OFFEROR is responsible for all associated costs necessary to provide DMS(s) utilities (for example, water, lighting, and portable toilets).
- 3.6.10 The OFFEROR is responsible for all associated costs necessary to provide DMS(s) fire protection (for example, an operational water truck [sufficient and equipped for fire protection], fire breaks, and a site foreman).
- 3.6.11 The OFFEROR is responsible for all associated costs necessary to provide qualified personnel, as well as lined containers or containment areas, for the segregation of visible HHW/contaminants that may be mixed with disaster debris. The cost associated with qualified personnel and lined containers/containment areas for HHW/contaminant segregation is reflected in this scope of work. The END USER will be responsible for disposing of HHW/contaminant material segregated and stored in lined containers at the DMS(s)
- 3.6.12 The OFFEROR shall provide tower(s) from which the END USER or its authorized representative can make volumetric load calls. The tower provided by the OFFEROR will meet required minimum specifications.
- 3.6.13 The OFFEROR is responsible for operating the DMS(s) in accordance with Occupational Health and Safety Administration (OSHA), EPA, and TCEQ guidelines.
- 3.6.14 Upon completion of haul-out activities, the OFFEROR shall restore the site to its original condition prior to site use at their own expense, abide by all Local, State, and Federal environmental regulatory requirements, and obtain a written release from the END USER or its authorized representative. Site remediation will include but is not limited to returning the original site grade, sod, and other physical features. Site remediation does not include restoring fencing, concession stands, lighting, and other permanent structures that may have been demolished at the END USER'S direction for DMS(s) operations. All debris, mulch, and other residual material is to be removed adequately; fill dirt and/or other base material (if required) must meet standards for intended use; and new sod or seeding must meet standards for intended use. Site remediation will also include returning all utilized sites to their original condition as verified through soil and groundwater samples. Site remediation will abide by all State and Federal environmental regulatory requirements and is subject to final approval by the END USER.

3.7 DMS Management and Reduction by Grinding

Work shall consist of all labor, equipment, fuel, and miscellaneous costs necessary to reduce disaster debris by grinding. Reduction methods are at the discretion of the END USER. Grinding must be approved by the END USER prior to commencement of reduction activities.

- 3.7.1 All un-reduced disaster debris must be staged separately from reduced debris at the DMS(s).
- 3.7.2 The OFFEROR must obtain the END USER'S approval to reduce C&D debris. If approved for reduction by the END USER, C&D debris must be reduced via grinding in order for the END USER to compensate the OFFEROR for reduction. Incineration or mauling of C&D are not acceptable methods of C&D reduction.

3.8 DMS Management and Reduction by Incineration

Work shall consist of all labor, equipment, fuel, and miscellaneous costs necessary to reduce disaster debris by incineration. Reduction methods (controlled open-air incineration and air curtain burning) are at the discretion of the END USER. Incineration must be approved by the END USER prior to commencement of reduction activities.

- 3.8.1 All un-reduced disaster debris must be staged separately from reduced debris at the DMS(s).

3.9 Haul-Out of Reduced Debris to Final Disposal Site

Work shall consist of all labor, equipment, fuel, traffic control costs, and associated costs necessary to load and transport reduced eligible material (such as ash, compacted C&D, or mulch) from an END USER-approved DMS(s) to an END USER-approved final disposal site in accordance with all Local, State, and Federal regulations.

- 3.9.1 All un-reduced disaster debris must be transported to a final disposal site separately from reduced debris.
- 3.9.2 The OFFEROR shall provide the name and address of each disposal site to be used along with the name and the telephone number of a responsible party for each site, prior to commencing the work.
- 3.9.3 The OFFEROR shall not use any disposal site without the written consent of the END USER. All costs and fees associated with the disposal of debris shall be reviewed for reasonableness by the END USER prior to issuing any such authorization.
- 3.9.4 The OFFEROR shall initiate and manage the execution of a written three-party agreement between the disposal site owner/operator, the OFFEROR, and the END USER for permission to post an END USER inspector at the site for verification of each load disposed.
- 3.9.5 The OFFEROR shall provide a sufficient number of debris site towers and/or certified scales meeting END USER specifications to provide for the efficient delivery of waste streams without excessive wait times. The END USER shall decide what constitutes an excessive wait time. To the extent that the END USER determines that additional towers and/or scales are required, additional towers must be operational within forty-eight (48) hours of the END USER'S request and certified scales must be operational within five (5) business days of the END USER'S request or other time frame as determined by END USER.
- 3.9.6 At the completion of disposal operations, each disposal site will issue a written summary of the quantity, type, and origin of waste delivered.
- 3.9.7 The OFFEROR shall not receive any payment from the END USER for haul-out or load tickets related to reduced or unreduced debris transported and disposed of at a final disposal site that was not approved by the END USER.

3.10 Removal of Hazardous Leaning Trees and Hanging Limbs

Work shall consist of all labor, equipment, fuel, control costs, and other associated costs necessary to remove all eligible hazardous leaning trees six (6) inches or greater in diameter, measured four (4) feet from the base of the tree or chest height, and eligible hazardous hanging limbs two (2) inches or greater in diameter in the END USER ROW. Further, debris generated from the removal of eligible hazardous leaning trees and eligible hazardous hanging limbs two (2) inches or greater in the END USER ROW will be placed in the safest possible location on the END USER ROW and subsequently removed in accordance with Section 5.2 of this RFP. Eligible hazardous leaning trees less than six (6) inches in diameter, measured four (4) feet from the base of the tree or at chest height, will be flush cut, loaded, and removed in accordance with Section 5.2 of this RFP. The END USER will not compensate the OFFEROR for cutting leaning trees less than six (6) inches in diameter on a unit rate basis. The collection of all eligible hazardous leaning trees and eligible hazardous hanging limbs must be performed on the same day as the cut work. If there is insufficient room for safe placement along the END USER ROW, then the OFFEROR must load the resulting debris as eligible hazardous leaning trees or eligible hazardous hanging limbs as they are removed.

- 3.10.1 Eligible hazardous leaning trees will be identified by the END USER or its authorized representative for removal. Removal and transportation of hazardous leaning trees six (6) inches or greater in diameter on the END USER ROW or private property will be performed as identified by the END USER or authorized representative. All disaster-specific eligibility guidelines regarding size and diameter of hazardous leaning trees will be communicated to the OFFEROR in writing by the END USER or authorized representative. For hazardous leaning trees to be removed and eligible for reimbursement, the tree must satisfy a minimum of one (1) of the following requirements:
 - a. The tree has more than fifty (50) percent of the crown damaged or destroyed (requires written documentation from an arborist).
 - b. The tree has a split trunk or broken branches that expose the heartwood.
 - c. The tree has fallen or been uprooted within a public use area.
 - d. The tree is leaning at an angle greater than thirty (30) degrees.

- 3.10.2 Eligible hazardous hanging limbs will be identified by the END USER or its authorized representative for removal. Removal and placement of eligible hazardous hanging limbs two (2) inches or greater in diameter on the END USER ROW or private property will be performed as identified by the END USER'S authorized representative. All disaster-specific eligibility guidelines regarding size and diameter of limbs will be communicated to the OFFEROR in writing by the END USER'S authorized representative. For hazardous hanging limbs to be removed and eligible for payment, the limb must satisfy all the following requirements:
- a. The limb is greater than two (2) inches in diameter.
 - b. The limb is still hanging in a tree and threatening a public use area.
 - c. The limb is located on improved public property.

3.11 Removal of Hazardous Stumps

Work shall consist of all labor, equipment, fuel, traffic control costs, and other associated costs necessary to remove all hazardous uprooted stumps greater than twenty-four (24) inches in diameter, measured twenty-four (24) inches from the base of the tree, in the END USER ROW. Any voids not backfilled immediately following hazardous stump removal must have measures taken to protect public health and safety. Further, debris generated from the removal of eligible hazardous uprooted stumps in the END USER ROW will be placed in the safest possible location on the ROW and subsequently removed in accordance with Section 3.2 of this RFP. Stumps measured twenty-four (24) inches from the base of the tree and less than twenty-four (24) inches in diameter will be considered normal vegetative debris and will be removed in accordance with Section 3.2 of this RFP. The END USER will not compensate the OFFEROR for removing hazardous stumps less than twenty-four (24) inches in diameter on a unit rate basis and instead will be considered normal vegetative debris. The diameter of stumps less than twenty-four (24) inches will be converted into a cubic yardage volume based on the published FEMA Stump Conversion Table (see Attachment 1) will be removed under the terms and conditions of Section 3.2.

- 3.11.2 Eligible hazardous stumps will be identified by the END USER for removal. Removal and transportation of hazardous uprooted stumps in the END USER ROW and private property will be performed as identified by the END USER. All disaster-specific eligibility guidelines regarding size and diameter of hazardous stumps will be communicated to the OFFEROR in writing by the END USER. For hazardous stumps to be removed and eligible for reimbursement, the stump must satisfy the following requirements:
- a. Over fifty (50) percent of the tree crown is damaged or broken and heartwood is exposed.
 - b. Fifty (50) percent or more of the root ball is exposed.
 - c. The stump is on END USER ROW and poses an immediate threat to public health, safety, or welfare.
- 3.11.3 Stumps that are not attached to the ground will be considered normal vegetative debris and will be subject to removal under the terms and conditions of Section 3.2. Stumps with less than fifty (50) percent of the root ball exposed shall be flush cut to the ground. The stump portion of the tree will not be removed but the residual debris (that is, tree trunk) will be removed under the terms and conditions of Section 3.2. The cubic yard volume of the unattached stump will be based on the diameter conversion using the published FEMA Stump Conversion Table (see Attachment 1).
- 3.11.4 The END USER or its representative will measure and certify all stumps before removal.
- 3.11.5 Stumps shall only be collected after the END USER and the OFFEROR document and perform the following:

- a. Location – Determine that the uprooted stump is located on improved public property or a public ROW. Record and document the location using photography, map depiction, and specific descriptive notations.
 - b. Size – Measure and record the diameter of the stump to be removed at the appropriate location.
 - c. Marking – Eligible stumps will be marked and uniquely numbered with green paint. Ineligible stumps will be marked with red paint.
 - d. Stump Worksheet – Hazardous Stump Worksheet provided by the monitoring firm(s) will be completed in full for each stump to capture the following information: 1) names and signatures of parties present; 2) physical location (street address, road cross streets, etc.); 3) stump number; 4) size of the stump; and 5) date of stump removal.
- 3.11.6 The unit stump price shall include but not be limited to stump extraction, stump cavity filling with compacted soils and installation of seed and/or sod, stump hauling, and stump reduction.

3.12 ROW White Goods Debris Removal

Work shall consist of all labor, equipment, fuel, traffic control costs, and other associated costs necessary for the collection of white goods from the ROW, removal of refrigerants, transportation to END USER-approved DMS, decontamination, and transportation to the END USER'S approved final disposal site.

- 3.12.1 White goods containing refrigerants must first have such refrigerants removed by the OFFEROR'S qualified technicians prior to mechanical loading. White goods can be collected without first having refrigerants removed if the white goods are manually placed into a hauling vehicle with lifting equipment so that the elements containing refrigerants are not damaged.
- 3.12.2 The removal, transportation, and disposal of white goods includes obtaining all necessary Local, State, and Federal Handling Permits and operating in accordance with all Local, State, and Federal regulatory agencies.
- 3.12.3 There are no disposal fees for residential white goods.

3.13 Used Electronics

Work shall consist of all labor, equipment, fuel, traffic control costs, and other associated costs necessary for the removal, transportation, and proper disposal of eligible used electronics from the ROW to the END USER-approved final disposal site. Eligible used electronics includes but is not limited to disaster-damaged televisions, computers, computer monitors, and microwaves in areas identified and approved by the END USER. The OFFEROR shall recycle or dispose of all eligible used electronics in accordance with all Local, State, and Federal regulations.

3.14 Household Hazardous Waste Removal, Transport, and Disposal

Work shall consist of all labor, equipment, fuel, traffic control costs, and other associated costs necessary for the removal, transportation, and disposal of HHW.

- 3.14.1 The removal, transportation, and disposal of HHW includes obtaining all necessary Local, State, and Federal Handling Permits and operating in accordance with all Local, State, and Federal regulations.

- 3.14.2 The collection methods shall include collection vehicles supplied by the OFFEROR which shall be capable of transporting HHW materials from the curb to the approved final disposal sites. All hazardous waste collection personnel shall wear Level D personal protective equipment (PPE)

and carry a means of communication (for example, cell phone or radio) for safety and operational purpose. OFFEROR personnel shall observe all applicable safety requirements for the handling of HHW in accordance with applicable regulations. All HHW shall be examined prior to collection to ensure it is free of other more serious contaminants, including PCBs. Such serious and non-qualifying non-HHW waste shall be noted and scheduled for separate recovery by the END USER or OFFEROR as directed by the END USER. Debris identified as HHW shall be collected and placed in poly bags for temporary storage during transport to the approved final disposal site.

3.14.3 HHW from DMS

3.15 Abandoned Vessel and Vehicle Removal

Work shall consist of the all labor, equipment, fuel, traffic control costs, and other associated costs necessary for the removal and haul-out of eligible vessels and vehicles in areas identified and approved by the END USER. The removed eligible vehicles will be hauled to an END USER-approved staging area and subsequently disposed of by the appropriate regulatory agency.

- 3.15.1 The removal, transportation, and disposal required for abandoned vessel and vehicle removal includes obtaining all necessary Local, State, and Federal Handling Permits and operating in accordance with all Local, State, and Federal regulations.

3.16 Animal Carcass Removal and Disposal

Work shall consist of all labor, equipment, fuel, traffic control costs, and other associated costs necessary for the removal, transportation, and lawful disposal of dead animal carcasses in areas identified and approved by the END USER to an approved final disposal site. The carcasses will be hauled to an END USER-approved staging area and subsequently disposed of by the appropriate regulatory agency.

- 3.16.1 The OFFEROR will coordinate activities with the appropriate Local animal control agency.
- 3.16.2 The removal, transportation, and disposal of Animal Carcasses includes obtaining all necessary Local, State, and Federal Handling Permits and operating in accordance with all Local, State, and Federal regulations.

3.17 Other Debris Removal Work

Neither the OFFEROR nor any SUB-OFFEROR shall solicit work from private citizens or others to be performed in the designated work areas during the term of this CONTRACT. The END USER reserves the right to require the OFFEROR to dismiss or remove from the project any workers as the END USER sees necessary. Any debris removal vehicles dismissed from the project must have their issued placard removed and destroyed.

3.18 Use of Local Resources

The OFFEROR will be able to use their own SUB-OFFEROR resources to meet the obligations of the contract. FEMA encourages using local resources. The END USER'S will establish the extent to which OFFEROR must use local resources. It is expected that the awarded OFFEROR will encourage SUB-OFFERORS resources located within the disaster area, including but not limited to procuring supplies and equipment, awarding subcontracts, and employing workmen at the END USER'S discretion.

3.19 Working Hours

Working hours of this CONTRACT shall only be during daylight hours, Monday through Sunday, or as otherwise directed by the END USER. No work outside these hours shall be allowed unless approved in advance by the END USER.

- 3.19.1 The OFFEROR shall conduct debris removal operations that generate noise levels above that normally associated with routine traffic flow during daylight hours only. Work may be performed seven (7) days per week. Adjustments to work hours, as local conditions may dictate, shall be coordinated between the END USER and the OFFEROR. Unless otherwise directed, the OFFEROR must be capable of conducting volumetric reduction operations at DMS locations on a twenty-four-(24)-hour, seven-(7)-day-a-week basis. No work will be performed on the following holidays without prior approval of the END USER:
- a. New Year's Day
 - b. Memorial Day
 - c. Independence Day
 - d. Labor Day
 - e. Thanksgiving Day
 - f. Christmas Day

3.20 Debris Site Tower Specifications

The OFFEROR shall provide as many towers as designated by the END USER at each disposal site for the use of END USER representatives during their inspection of dumping operations.

- 3.20.1 If ingress and egress of the DMS(s) is of significant distance that the END USER or its authorized representative are unable to verify the entering and exiting trucks, then the OFFEROR may be required to provide a second tower.
- 3.20.2 The inspection platform of the tower shall be constructed at a minimum height of ten (10) feet from surrounding grade to finish floor level, have a minimum eight (8) feet by eight (8) feet of usable floor area, be covered by a roof with two (2) feet overhangs on all sides, and be provided with appropriate railings and a stairway. The platform shall be enclosed, starting from platform floor level and extending up four (4) feet on all four (4) sides. The expense incurred by the OFFEROR for the construction of towers is an overhead expense considered part of the OFFEROR'S compensation under the terms and conditions of Section 2.
- 3.20.3 The OFFEROR shall provide a minimum of one (1) portable toilet at each dump site for the use of END USER authorized representatives during their inspection of dumping operations. The toilet shall be provided prior to start of any dumping operations and will be kept in a sanitary condition by the OFFEROR throughout dumping operations. The expense incurred by the OFFEROR for the operation of portable toilets is an overhead expense considered part of the OFFEROR'S compensation under the terms and conditions of Section 2.
- 3.20.4 Care shall be taken to place tower at a sufficient distance away from any reduction/dumping operations. If necessary, dumping operations may be temporarily suspended by the END USER due to unsuitable conditions at the tower.

3.21 Equipment

- 3.21.1 All trucks and other equipment must comply with all applicable Local, Tribal, State, and Federal regulations. Any truck used to haul debris must be capable of rapidly dumping its load without the assistance of other equipment, and must be equipped with a tailgate that will effectively contain the debris during transport and permit the truck to be filled to capacity.
- 3.21.2 Sideboards or other extensions to the bed are allowable provided they meet all applicable regulations, cover the front and both sides, and are constructed to withstand severe operating conditions. The sideboards are to be constructed of two (2) inch by six (6) inch boards or greater and not to extend more than two (2) feet above the metal bedsides. Trucks or equipment certified with sideboards must maintain such sideboards and keep them in good repair. To ensure compliance, equipment will be inspected by the END USER or authorized representative prior to its use by the OFFEROR.
- 3.21.3 Trucks or equipment designated for use under this contract shall not be used for any other work during the working hours of this contract. The OFFEROR shall not solicit work from private citizens or others to be performed in the designated area during the period of this contract. Under no circumstances will the PROPOSER mix debris hauled for others with debris hauled under this contract.
- 3.21.4 Debris shall be reasonably compacted into the hauling vehicle. Any debris extending above the top of the bed shall be secured in place to prevent it from falling off. Measures must be taken to prevent debris from blowing out of the hauling vehicle during transport to an approved DMS or an approved final disposal site.
- 3.21.5 Equipment used under this contract shall be rubber tired and sized properly to fit loading conditions. Excessively large equipment (100 cubic yards and up) and non-rubber tired equipment must be approved for use on the road by the END USER.
- 3.21.6 Hand-loaded vehicles are prohibited unless pre-authorized in writing by the END USER following the event. All hand-loaded vehicles will receive an automatic fifty (50) percent reimbursement deduction for lack of compaction.

3.22 Traffic Control

- 3.22.1 The OFFEROR shall mitigate the effects of their operations on local traffic to the fullest extent practical. The OFFEROR is responsible for establishing and maintaining appropriate traffic controls in all work areas, including DMS(s) and debris collection sites.
- 3.22.2 The OFFEROR shall provide, erect, and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs, and other traffic control devices at all OFFEROR work areas to ensure the safety of vehicular and pedestrian traffic.
- 3.22.3 The OFFEROR shall provide qualified flag personnel where necessary to direct the traffic and shall take all necessary precautions to protect the designated area and the safety of the public.
- 3.22.4 All work shall comply with all applicable Local, State, and Federal regulations governing personnel, equipment, and workplace safety. Any notification of a deficiency in traffic control or other safety items shall be immediately corrected by the OFFEROR. No further work shall take place until the deficiency is corrected. Neither the END USER nor the END USER'S authorized representative shall sign any additional load or unit rate tickets until the safety item is corrected.
- 3.22.5 Highways, streets, or parts of the designated area closed to through traffic shall be protected by effective barricades, and obstructions shall be illuminated during the hours from sunset to sunrise. Suitable warning signs shall be provided to properly control and direct traffic.
- 3.22.6 All barricades, warning signs, lights, temporary signals, other protective devices, flag persons, and signaling devices shall meet the minimum requirements established in the Manual on Uniform Traffic Control Devices for Streets and Highways, Part VI, prepared by the National Joint

Committee on Uniform Traffic Control Devices and current at the time bids are received. Traffic control will conform to the State's most current roadway and traffic design standards and the Federal Highway Administration's (FHWA) Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways. The foregoing requirements are to be considered as minimum and the OFFEROR'S compliance shall in no way relieve the OFFEROR of final responsibility for providing adequate traffic control devices for the protection of the public and OFFEROR'S employees throughout the designated area.

- 3.22.7 The expenses incurred by the OFFEROR for traffic control shall be compensated under the terms and conditions of Section 2.

3.23 Damage to Public or Private Property

- 3.23.1 All items damaged as a result of OFFEROR or SUB-OFFEROR operations (for example, sidewalks, seating, curbs, pipes, drains, water mains, pavement, mail boxes, and turf) shall be repaired or replaced by the OFFEROR, at their expense, in a manner prescribed by and at the sole satisfaction of the END USER. The OFFEROR will be responsible for any invoices submitted to the END USER (such as by utility companies or landowners) that are determined to be the result of damage done by the OFFEROR. The END USER reserves the right to pay any such invoices and deduct the cost from the OFFEROR'S invoice. Repairs or receipt of repairs shall be completed and submitted to the END USER prior to submission of the OFFEROR'S invoice for work accomplished. If the OFFEROR fails to repair any damaged property, the END USER may have the work performed and charge the OFFEROR.
- 3.23.2 The OFFEROR shall restore all disturbed areas to their original condition, including re-grading, use of rye grass and permanent grass, and any other means necessary.
- 3.23.3 The OFFEROR'S failure to restore damage to public or private property to the satisfaction of the END USER will result in the END USER withholding retainage money in an amount sufficient to make necessary repairs.

3.24 Existing Utilities

- 3.24.1 Some trees and debris that are to be removed under this contract may be blocked or entangled with overhead power, telephone, and television cables. In this case, it shall be OFFEROR'S responsibility to coordinate directly with the utility owners to arrange for the removal of the debris without damage to the overhead and underground utility lines. The OFFEROR shall pay all such costs to the utility company for any adjustments.
- 3.24.2 The OFFEROR shall make the necessary repairs or pay all costs incurred to repair damaged utilities, as determined by the affected utility company. Repairs to all municipal and privately owned water and sewer facilities shall be made by the OFFEROR.

3.25 Environmental Protection

- 3.25.1 All chemicals of whatever nature used during project construction or furnished for project operations must be state and federally certified. Their use and disposal of all residues shall strictly comply with instructions.
- 3.25.2 The OFFEROR shall, at their own expense, ensure that noise and dust pollution is minimized to comply with all Local and State regulations and the approval of the END USER. The OFFEROR shall comply in a timely manner with all directions of the END USER regarding the use of a water truck or other approved dust abatement measures.
- 3.25.3 The OFFEROR shall comply with all laws, rules, regulations, and ordinances regarding environmental protection.

3.26 Documentation and Measurement

- 3.26.1 Prior to beginning any work, the END USER or its authorized representative shall clearly number each truck hauling debris or piece of equipment loading debris. All vehicles must be certified by the END USER or its authorized representative prior to debris collection. If a vehicle is working under multiple contracts or for multiple communities, it must be re-certified by an END USER authorized representative each time it returns to work from other contracts or communities.
- 3.26.2 The OFFEROR is responsible for ensuring that all SUB-OFFERORS maintain valid driver's licenses and equipment legally fit for travel on the road.
- 3.26.3 The OFFEROR shall designate one Project Manager. The Project Manager shall provide the END USER with a telephone number at which the Project Manager can be reached throughout the project.
- 3.26.4 Load tickets will be provided by the END USER or its authorized representative for recording volumes of debris removal.
- a. Each load ticket shall consist of one original and four carbon-copy duplicates.
 - b. Load tickets will be issued by an END USER authorized representative at the loading site. The END USER will keep one copy of the ticket, and give four copies to the vehicle operator. Upon arrival at the dump site, the vehicle operator will give the four copies to the END USER authorized representative at the dump site. Trucks with less than full capacities will be adjusted down by visual inspection. This determination will be made by the END USER authorized representative present at the dump site. The END USER authorized representative will validate, enter the estimated debris quantity, and sign the load tickets. The END USER will keep the original copy and the three remaining duplicate copies will be returned to the vehicle operator for the OFFEROR'S records.
 - c. The OFFEROR shall give written notice of the location for work scheduled twenty-four (24) hours in advance to the END USER, or other time frame as determined by END USER.

3.27 Ownership of Debris

All debris residing in the END USER ROW and END USER provided DMS(s) shall be the property of the END USER until final disposal at a properly permitted disposal site. The OFFEROR shall be responsible removing debris up to the point where debris can only be described as light litter and additional collection can be facilitated only by sweeping and raking. In addition to debris stored on the ROW as the result of road clearing, the END USER will direct residents to place debris in segregated piles along the ROW, separated as to the waste category. There may be a need to perform some curbside separation of the different waste materials. Different waste materials will be collected in separate vehicles and may require disposal at different locations, which will be approved by the END USER. Any items requiring disposal at special sites shall be required to be monitored for the collection, complete haul, and delivery at the approved special site with the monitor obtaining an original copy of the disposal ticket showing inbound and outbound collection vehicle weights.

- 3.27.1 All bagged and bundled waste and debris smaller than two (2) inches in diameter and shorter than two (2) feet in length are outside the scope of this contract unless specifically directed by the END USER. Collection of municipal solid waste (MSW) is outside the scope of this contract. All debris handled by the OFFEROR shall become the property of the OFFEROR upon collection.
- 3.27.2 It is recognized that C&D debris might contain small amounts of asbestos, lead-based paints, treated wood, or similar materials. The Texas Commission on Environmental Quality (TCEQ) may issue orders for the classification and disposition of all disaster debris. Based on the mandates of TCEQ and other applicable State and Federal reimbursement agencies, the character and disposal of waste streams will be determined. The OFFEROR and END USER will establish a final disposal plan based on these mandates.

3.28 END USER Responsibilities

END USER responsibilities will vary with each END USER depending on END USER needs and resources. The END USER, at a minimum, will be responsible for the following:

- a. Coordinating collection activities with the OFFEROR
- b. Completing the END USER service request form
- c. Identifying suitable DMS activities
- d. Promoting debris management activities
- e. Providing educational materials
- f. Submitting post-collection DMS(s) data reports to TCEQ
- g. Recruiting and coordinating volunteers
- h. Coordinating with local police, fire, emergency medical services (EMS), and other appropriate agencies
- i. Providing emergency contact information
- j. Executing the contract with selected OFFEROR(S)
- k. Issuing a written Notice to Proceed at the appropriate time

4. TERMS AND CONDITIONS

4.1. Safety

PROPOSER shall be solely responsible for maintaining safety at all work sites. PROPOSER shall take all reasonable steps to insure safety for both workers and visitors to the site(s) to include traffic control. PROPOSER will also be solely responsible to ensure that all OSHA requirements are met and a safety officer assigned to the project for the duration of this contract.

4.2. Generator Status and Indemnification

In order to protect H-GAC and END USERS from liabilities associated with on-site activities, transportation, and inherent CERCLA liabilities involving disposal, the OFFEROR should supply its own labor, transportation, and dispose of the waste at only EPA-permitted disposal facility. The OFFEROR must agree to assume generator status and be responsible for preparing and signing all manifests related to the END USER'S household hazardous collection and/or disposal facility.

OFFEROR agrees to and shall defend, indemnify, and hold H-GAC, END USERS, their employees, officers, and legal representatives (collectively, "H-GAC/END USERS") harmless for all claims, causes of action, liabilities, fines and expenses (including, without limitation, attorney's fees, court costs, and all other defense costs and interest), for injury, death, damage, or loss to persons or property sustained in connection with or incidental to performance under this agreement including, without limitation, those caused by:

OFFEROR'S and/or its agents', employees', officers', directors', or SUB-OFFERORS' actual or alleged negligence or intentional acts or omissions;

H-GAC/END USERS' and OFFEROR'S actual or alleged concurrent negligence, whether OFFEROR is immune from liability or not; and

H-GAC/END USERS' and OFFEROR'S actual or alleged strict products liability or strict statutory liability, whether OFFEROR is immune from liability or not.

OFFEROR shall defend, indemnify, and hold H-GAC/END USERS harmless during the term of this agreement and for four years after this agreement terminates. OFFEROR shall not indemnify H-GAC/END USERS for the H-GAC/END USERS' sole negligence.

4.3. Recycling and Waste Management Hierarchy

H-GAC recognizes concerns for the depletion of natural resources and the ecological effect of wastes in the environment, and encourages the use of recycled, recyclable, and reusable products and materials. H-GAC also adheres to the Environmental Protection Agency's waste hierarchy of preferred methods for waste reduction. Source reduction is the most preferred method, followed by recycling, and lastly disposal in combustion facilities and landfills. PROPOSERS are encouraged to demonstrate their support of the recycling and waste management hierarchy goals of H-GAC and to arrange for the ultimate disposition of the wastes accordingly.

4.4. Compliance with Americans with Disabilities Act (ADA)

PROPOSERS shall be in compliance with all relevant requirements of the Americans with Disabilities Act (ADA) as applicable to their operations. By submission of a proposal, PROPOSER acknowledges its intention to conform to the requirements of the Act. Failure to comply with ADA may cause H-GAC to suspend a contract with any successful PROPOSER.

After contract execution, the PROPOSER is the prime and responsible party for contracting and communicating the work to be performed to SUB-OFFERORS and for channeling other information between H-GAC and/or END USERS and SUB-OFFERORS, if necessary.

- 4.4.1. Prime OFFEROR assumes total responsibility for the quality and quantity of all work performed, whether it is undertaken by the Prime OFFEROR or is subcontracted to another organization.
- 4.4.2. If SUB-OFFEROR involvement is required in the use of license, patent, or proprietary process, the Prime OFFEROR is responsible for obtaining written authorization from the SUB-OFFEROR to use the process or providing another process comparable to that which is required and which is acceptable to H-GAC, all at no additional cost or liability to H-GAC and/or END USER.
- 4.4.3. All disposal sites and treatment methods used by the OFFEROR shall be approved by END USER. Any changes in disposal site or treatment method without obtaining prior approval of END USER shall constitute a material breach of this contract. In all instances, the OFFEROR must adhere to EPA treatment standards for treatment and disposal of wastes.
- 4.4.4. The PROPOSER represents and warrants by the submission of a proposal, for itself and its respective employees, officers, board members and agents, that its participation in this RFP process and, if selected, its engagement by H-GAC to perform planning services would not result in either a personal conflict of interest or an organizational conflict of interest.
- 4.4.5. H-GAC and/or END USER reserves the right to conduct audits and/or inspections of any transportation, storage or disposal facilities used by the OFFEROR.

4.5. OFFEROR Warranties

- 4.5.1. The successful PROPOSER (OFFEROR) will warrant that it has sufficient and requisite experience, personnel, education, licenses and permits, equipment, and knowledge to safely and lawfully collect, transport, and dispose of all disaster debris that may be collected for disposal by END USER jurisdictions.
- 4.5.2. OFFEROR must warrant that it understands the currently known hazards which are present to persons, property, and the environment in the transportation, storage, and treatment/disposal of the wastes received at all events.

- 4.5.3. OFFEROR must warrant that the OFFEROR owned or approved storage treatment/disposal facilities are licensed and permitted as necessary. In the event that the storage/treatment facility loses its permitted status hereafter, during the term of the Agreement, the OFFEROR will promptly notify H-GAC of such loss.
- 4.5.4. The OFFEROR will ensure that all vehicles transporting disaster debris (SUB-OFFERORS included) are properly registered, and that disaster debris drivers have all required State and Federal licenses.
- 4.5.5. OFFEROR must obtain all required Local, State, and Federal permits for the responsibilities of the OFFEROR. OFFEROR must obtain all necessary permits and qualify to transport waste according to DOT exemptions. OFFEROR must qualify to transport waste streams packaged in non-DOT specification packaging under DOT exemptions.

4.6. Pre-audit

Any contract resulting from this RFP process may be pre-audited in the manner required by the Local Government Budget and Fiscal Control Act as evidenced by an END USER contract or purchase order issued which is incorporated as if fully set out.

4.7. Records Retention and Review

The OFFEROR shall retain all records pertaining to the services and the contract for these services and make them available to H-GAC for a period of seven (7) years following receipt of final payment for the services referenced herein. Final payment may be payment of any retention for the services.

4.8. Written Notice to Proceed

The END USER shall issue an official written Notice to Proceed for the services referenced in this contract. The notice shall be sent via electronic mail or facsimile followed by regular mail. Under no circumstances shall the END USER be liable for any services rendered unless the written Notice to Proceed has been sent and received by the OFFEROR. OFFEROR must acknowledge receipt of the written Notice to Proceed.

5. CONTRACT PERIOD

The commencement date of a contract for **Offerors** whom have been awarded contracts resulting from this proposal will be September 1, 2017, and shall remain in effect for three (3) years with an end date of August 31, 2020. At that time, **H-GAC** shall have the option to renew the contract, under the same terms and conditions for up to two (2) one-year extensions when agreed upon by all parties concerned in writing. Active **End User** Service Agreements, in place at contract expiration, shall continue in full force and effect through the term stipulated in the agreement.

6. LAW, REGULATIONS AND STANDARDS

All services performed pursuant to this RFP and any subsequent contract must fulfill applicable Federal, State and local regulations, as applicable, which may include the Federal Emergency Management Agency (FEMA), Federal Highway Administration (FHWA), Texas Department of Transportation (TxDOT), Texas Department of Health (TDH), Natural Resources Conservation Services (NRCS), Historical Preservation Office (SHPO), the Texas Department of Environmental Protection (TDEP), National Marine Fisheries Service (NMFS), United States Fish and Wildlife Service (FWS) or other regulations as determined by the **End-User's** needs. **Offeror/Offeror** further agrees that any work performed under an **H-GAC** contract will be executed in compliance with the most current professional standards and specifications which may be applicable at the time in which services are being rendered.

NOTE: Prior to entering into a contract or service agreement with a Offeror, it is the end user's responsibility to ensure the contract/agreement meets federal, state and other applicable requirements.

7. COMMITMENT

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

- **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 sub-offerors in providing services/products related to this solicitation, **Offeror(s)** must make and demonstrate a good faith effort to include HUB participation under a contract. **Offeror(s)** good faith effort must include, but is not limited to, the following affirmative steps (ref. 2 CFR 200.321):
 - 1) Placing qualified small and minority businesses and women's business enterprises on solicitation list;
 - 2) Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
 - 3) Dividing total requirements, when economically feasible, into smaller task or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - 4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - 5) Using the services and assistance as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce;

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).

8. PROVISION OF SERVICE

NOTE: Additional competition is required among the pool of HGACBuy Contractors. End User must survey at least three (3) Contractors from the available pool prior to entering into a contract/service agreement with a selected contractor.

- a) On request of **End User**, **Offeror** shall provide a written quote based on their **H-GAC** contract products and or services offerings and pricings. **End User** shall have the right to accept or reject the quote and/or to request changes to the quote for re-evaluation. **End User** may also request an oral presentation or presentation of other physical evidence of **Offeror's** capabilities.
- b) **End User** and **Offeror** shall be free to negotiate terms and pricing other than as stipulated in the base **H-GAC** contract **but cannot exceed awarded contract pricing**. In that regard, **Offeror** shall be allowed and encouraged to discount pricing for large or extended projects, and to offer retainer type or time based Service Agreements. In any event, the transaction shall still be considered as falling under the umbrella of the **H-GAC** contract.
- c) **End User** will send a purchase order/purchase document to **Offeror** as mutually agreed upon between the parties and **Offeror** will provide the ordered products/services.
- d) **Offeror** will submit required quarterly reports to **H-GAC** no later than the 30th day of the month following the end of the reported quarter. The report will list all billed activity for the previous quarter showing **End User** name, date, products and or services delivered/provided to **End User**, purchase amount for each **End User**, **H-GAC** Order Processing Charge amount and grand total of report.

- e) For each billable activity performed and/or product sold under an awarded contract, **H-GAC** will directly invoice **Offeror a 1.5% Order Processing Charge** applicable to the price of all services/products submitted in Offeror's response. Order Process Charge is calculated from awarded bid pricing before additional discounts (if any) have been applied. It is the Offerors responsibility to take the Order Processing Charge into consideration when preparing their response.

NOTE: The Order Processing Charge shall not be passed through to the end user.

- f) Upon receipt of payment from End User, **Offeror** shall promptly remit the Order Processing Charge to **H-GAC**. Remittance of payment to **H-GAC** shall be made based on the periodic quarterly reporting as stated above.
- g) In the interest of **End User** satisfaction and efficient use of resources, **H-GAC** desires to maintain contracts with active **Offerors** who provide satisfactory services to Members. In that regard, contracts will be monitored and performance measured. Contracts will be subject to termination if in **H-GAC's** opinion, activity is insufficient to warrant continuation.

9. END USER/SERVICE AGREEMENTS

Agreements between **End Users** and **Offeror** must be in accordance with **H-GAC** procedures. **Offeror** shall furnish a copy of any **End User/Service Agreement**. Agreements may not be modified, waived, discharged, terminated, amended, altered, or changed in any way except by written mutual agreement between **Offeror** and **End User**. Mutually agreed upon changes may be made to the agreement to address specific requirements, credit terms, and/or other unique circumstances relating to the needs of the **End User**. **Offeror** shall include a copy of such proposed agreement(s), if any, with any response to this RFP.

10. STRUCTURE OF PROPOSAL AND REQUIRED INFORMATION

Responsible **Offeror** shall provide straightforward, concise information that satisfies the requirements noted herein. Emphasis should be placed on conformity to **H-GAC's** instructions, requirements of this RFP, and completeness and clarity of content. The following core areas must be addressed specifically in any response to this proposal:

- a) This RFP is intended as a basis for selection of experienced and qualified **Offeror(s)** to provide products and or services falling within the scope of this RFP. In that regard, **Offeror** shall be required to submit a response that provides all information requested and conforms to the requirements outlined herein.

NOTE: If any requirement herein conflicts with any requirement for proposal detailed in Section A, Section B shall supersede the Section A requirement.

- b) **Offeror** shall provide a printed original plus one printed copy of the proposal, each contained in a separate hard sided three-ring binder. The binders shall be labeled "Original" and "Copy", and shall be organized in tabbed sections as described below. In each tabbed Section, **Offeror** shall provide all requested information as applicable to the products and or services being offered, formatted at **Offerors** discretion unless otherwise indicated. **Offeror** shall also provide an "Electronic Copy" of the complete proposal on a CDROM, DVD, or thumb drive, in native Word, Excel or PDF format, and submitted in the "Copy" of the proposal. All **H-GAC** Forms and **Offerors** pricing, provided in the "Electronic Copy", shall be submitted in Excel format only.

Tab A – Required H-GAC Forms and End User Agreement (if applicable)

1. Completed and signed **H-GAC Form A, Form B, Form C, Form H, Form 1295 and Form CIQ**
2. In the event you require an **End User/Service Agreement** rather than a purchase order to secure your products and or services, furnish a sample of any such agreement you propose to execute with an **End User** purchasing your products and or services pursuant to an **H-GAC** contract.

NOTE: Tab A and all its contents shall be included in the first tabbed section of your response (reference Section A - Subset 27(m), page 12 of 19).

Tab B – Business Viability, Capability & Organization

1. Company's Official registered name including brief company history, ownership, organization and year established.
2. Geographic coverage, including:
 - a. Corporate office location
 - b. Total number of employees within the company
 - c. Map and/or listing of sales and/or service office locations
 - d. Areas of operations
3. Gross revenue for each of the last three completed fiscal years (2014, 2015 & 2016) and current, unqualified, audited financial statement or SEC Form 10K for the proposing organization. Proposals submitted without the most current certified financial statement or SEC Form 10K shall be considered non-compliant
4. A minimum of six (6) debris removal project references including:
 - a. Agency name and address
 - b. Contact name
 - c. Title
 - d. Telephone number
 - e. Email address
 - f. Years products and or services were provided
 - g. Type of products and or services provided
 - h. Scale of debris removal indicated per cubic yard in the following ranges:
LOW RANGE 0-100k CY
MID RANGE 100k – 500k CY
HIGH RANGE 500k + CY
5. Organizational chart including proposed points of contact and a full-time project manager required to report to the END USER
6. Detailed listing of OFFEROR'S equipment and resources
7. Furnish a "Certificate of Registration" that identifies the States in which the Offeror is authorized to conduct business.
8. Proof of insurance coverage.
9. Ability to supply Performance and Payment bonds, if required by End-User.
10. **Offeror** must include a HUB summary document explaining how **Offeror** plans to foster small business participation in order to assist **HGACBuy** Members meet any mandated HUB goals.

NOTE: **Tab B and all its contents shall be included in the first tabbed section of your response (reference Section A - Subset 27(m), page 12 of 19).**

Tab C – Safety Plans and Records

1. Submit a list of on-site and off-site equipment that will be available at the collection site or facility. The list should include all fire prevention, safety, personal protective equipment, and other equipment that the Offeror determines suitable or necessary for the project.
2. Provide a mobilization and operations plan
3. Submit construction drawings for OSHA-compliant temporary inspection towers
4. Submit spill prevention and fire prevention plans tailored to on-site activities at the Debris Management Site (DMS) or facility.
5. Submit a format for a contingency plan and provide a description of notification procedures to the participants of on-site emergencies and evacuation of the participants in case of an emergency on-site.
6. Submit a detailed training outline of each position involved in debris removal and DMS(s) operations. Offeror shall also submit information regarding employee medical monitoring requirements.
7. Submit a listing of all warning notifications, violations, and/or citations received from pertinent federal and/or state agencies in the past three (3) years.

Tab D –Qualifications and Experience

1. Provide a listing of key personnel who would be assigned to the project, including their training and certifications and years of experience. PROPOSERS should also indicate which personnel will be primary contacts, which will be dedicated staff, and what role each staff member will play in execution of the contracted services.
2. Provide a listing of all training and professional experience (include all professional and third-party certifications, such as ISO 9000 Series, ISO 14000 Series).
3. Documented knowledge coordinating with Federal, State, and Local emergency agencies.
4. Previous experience with State and Federal reimbursement programs; including, but not limited to: FEMA and any other applicable Federal or State agencies associated with funding of debris removal and recovery efforts
5. Previous experience with special disaster recovery programs and all other services as indicated in the scope of work.

Tab E –Services and Rates

1. Describe in detail all products, services and/or solutions being offered. It is the understanding of H-GAC that equipment provided during the effort of any recovery project may be new or used and shall not be purchased under the terms of this procurement.
2. Provide complete pricing for all products, services and/or solutions being offered on **Form D & D1-Schedules 1 & 2**. Pricing must be included in the “Original”, “Copy” and “Electronic Copy.” All pricing provided in the “Electronic Copy” shall be submitted in **Excel format only**. Pricing may be submitted as Catalog Pricing and/or Price List. Multiple percentage discount structure is acceptable. Offeror must specify where different percentage discounts apply.

Pricing might include a schedule of job titles/classifications and proposed rates for each; charges for in-house materials and services e.g.; supplies, faxes, copies, photo scans, etc.; company policy for charging of reimbursable third party expenses; flat rates for specific activities; etc. The objective is to cover all possible cost. If awarded a contract, the charges for all products, services, and/or solutions provided to **End Users**, must be able to be verified by H-GAC procurement staff against your proposal.

When required by Federal program legislation, Offeror agrees that, for all Cooperative member prime construction contracts/purchases in excess of \$2,000, Offeror shall comply with the Davis-Bacon Act (40 USC 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, Offeror is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determinate made by the Secretary of Labor. In addition, Offeror shall pay wages not less than once a week. Current prevailing wage determinations issued by the Department of Labor are available at www.wdol.gov.

Offeror is encouraged to include any Value-Added Products and/or Services that **Offeror** currently performs in their normal course of business that is not included in the scope of the specification. Value Added Products and/or Services descriptions may include: training, manuals, software solutions, etc. Pricing must also accompany descriptions. Such offering(s) must be included on **Form D- Schedules 1 & 2**.

NOTE: By submission of a Response to this RFP, 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: Tab C and all its contents shall be included in the second tabbed section of your response (reference Section A - Subset 27(m), page 12 of 19).

NOTE: Tab D and all its contents shall be inserted in the third tabbed section of your response (reference Section A - Subset 27(m), page 12 of 19).

11. EVALUATION OF PROPOSALS

H-GAC staff will evaluate all proposals submitted to determine the extent to which they comply with requirements herein, and to which **Offeror(s)** best meet the needs of **HGACBuy End Users**. H-GAC may choose to use competitive negotiations to develop the final contract(s) with qualified **Offeror(s)**.

Proposals will be evaluated in two stages. The **first stage** will be a general evaluation of the completeness of all required H-GAC Forms, other required documentation and overall structure of proposal (**Pass/Fail**). Proposals deemed to be responsive will receive a Pass grade and then move to the second stage of the evaluation process.

The **second stage** will be scored using the criteria below, with a maximum score of 100 points. The approach and criteria are those that are applicable to a competitive negotiated procurement whereby proposals are evaluated to determine which proposals are within a Competitive Range. Criteria descriptions are not meant to be exhaustive and H-GAC may use any obtainable relevant information in the evaluation process.

Offeror(s) with a score of at least 75 points may be eligible for contract award recommendation, at H-GAC's sole discretion. Discussions and negotiations may then be carried out with **Offeror(s)** within the Competitive Range, after which Best and Final Offers (BAFOs) may be requested. However, H-GAC may select a proposal(s) for award without any discussions, negotiations or request for any BAFOs.

Any modification to the initial proposal made by **Offeror** in its BAFO shall be identified in its BAFO. BAFOs will be evaluated by H-GAC according to the same requirements and criteria as the initial proposal. H-GAC will make appropriate adjustments to the initial scores on any criteria that have been affected by any proposal modifications made by the BAFOs.

H-GAC will choose the **Offeror(s)** that it finds to be most advantageous to **HGACBuy End Users**, based upon the evaluation criteria. The results of the evaluations and the selection of a proposal(s) for any award will be documented.

If an award recommendation is made and approved by H-GAC's Board of Directors, the **Offeror(s)** may be invited to execute a contract, again at H-GAC's sole discretion.

Evaluation Criteria Table

Criteria Description	Possible Point Award
A. H-GAC FORMS , other required documentation and overall completeness of Proposal: This includes demonstrated ability to meet the small and minority businesses, women's business enterprises, and labor surplus area firm participation, or a documented "good faith effort".	Pass/Fail
B. Business Viability, Capability & Organization	25
C. Safety Plans and Record	20
D. Qualifications and Experience	15
E. Services and Rates	40
Total:	100

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



SECTION C - H-GAC FORMS

(Rev 03/21/2017)

For Use In Responding To Competitive Bid And Proposal Invitations

Invitation No.: DR09-17

Title: Disaster Debris Removal and Clearance Services

This Section contains the following **H-GAC FORMS**.

FORM	DESCRIPTION
Form A:	Offeror Identification and Authorized Signatory
Form B:	Historically Underutilized Business Enterprises
Form C:	Response Checklist
Form D:	Pricing Schedule 1
Form D1:	Pricing Schedule 2
Form W-9:	Request for Taxpayer Identification Number and Certification
Form CIQ:	Conflict of Interest Questionnaire
Form 1295	Certificate of Interested Parties

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

ALL completed *FORMS* must also be submitted electronically on electronic media (DVD, CD Rom, flash/thumb drive), excepting of course for signatures. The printed "Original" of the response will be considered as the official copy in case of any discrepancy between the electronic version and the printed Original.

Form D - Schedule 2

Hourly Labor, Equipment, and Material Price Schedule

Equipment Type With Operator	Estimated Hours	Hourly Labor Rate	Total
Air Curtain Burner, Self Contained System			
50' Bucket Truck			
Crash Truck w/Impact Attenuator			
Dozer, Tracked, D3 or Equivalent			
Dozer, Tracked, D4 or Equivalent			
Dozer, Tracked, D5 or Equivalent			
Dozer, Tracked, D8 or Equivalent			
Dump Truck, 16 +/- CY			
Dump Truck, 20 +/- CY			
Dump Truck, 38 +/- CY			
Generator, 5.5 kW, List kW Capacity			
Generator, 200 kW, List kW Capacity			
Generator, 2,500 kW, List kW Capacity			
Light Plant with Fuel and Support			
Grader w/12' Blade (Min. 30,000 LB)			
Hydraulic Excavator, 1.5 CY			
Hydraulic Excavator, 2.5 CY			
Knuckleboom Loader			
Lowboy Trailer w/Tractor			
Mobile Crane up to 15 Ton			
Pump, 95 HP (Minimum 25' Intake and 200' Discharge to Include Fuel and Support Personnel)			
Pump, 200 HP (Minimum 25' Intake and 200' Discharge to Include Fuel and Support Personnel)			
Pump, 650 HP (Minimum 25' Intake and 200' Discharge to Include Fuel and Support Personnel)			
Vac Truck (Mist Capacity), List Capacity			
Pickup Truck, 1 Ton			
Skid-Steer Loader, 1,500 LB Operating Capacity (w/ utility grapple)			
Skid-Steer Loader, 2,500 LB Operating Capacity (w/ utility grapple)			

Crew Category	Estimated Hours	Hourly Labor Rate	Total
Wheel Loader, 2.5 CY, 950 or Similar w/Operator, Foreman with Support Vehicle and Small Equipment, Laborer w/Chain Saw, and 2 Laborers w/Small Tools.			
Other – Please List			

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

A CONTRACT BETWEEN **HOUSTON-GALVESTON AREA COUNCIL**, Houston, Texas AND _____

This Contract is made and entered into by the **Houston-Galveston Area Council of Governments**, hereinafter referred to as **H-GAC**, having its principal place of business at 3555 Timmons Lane, Suite 100, Houston, Texas 77027, AND, _____ hereinafter referred to as the **CONTRACTOR**, having its principal place of business at _____.

ARTICLE 1: SCOPE OF SERVICES

The parties have entered into a _____ Contract to become effective as of _____, and to continue through _____ (the "**Contract**"), subject to extension upon mutual agreement of the **CONTRACTOR** and **H-GAC**. **H-GAC** enters into the Contract as Agent for participating governmental agencies, each hereinafter referred to as **END USER**, for the purchase of _____ offered by the **CONTRACTOR**. The **CONTRACTOR** agrees to sell _____ through the **H-GAC** Contract to **END USERS**.

ARTICLE 2: THE COMPLETE AGREEMENT

The Contract shall consist of the documents identified below in order of precedence:

1. The text of this Contract form, including but not limited to, Attachment A
2. General Terms and Conditions
3. Bid Specifications No: _____, including any relevant suffixes
4. **CONTRACTOR's** Response to Bid No: _____, including but not limited to, prices and options offered

All of which are either attached hereto or incorporated by reference and hereby made a part of this Contract, and shall constitute the complete agreement between the parties hereto. This Contract supersedes any and all oral or written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Contract cannot be modified without the written consent of both parties.

ARTICLE 3: LEGAL AUTHORITY

CONTRACTOR and **H-GAC** warrant and represent to each other that they have adequate legal counsel and authority to enter into this Contract. The governing bodies, where applicable, have authorized the signatory officials to enter into this Contract and bind the parties to the terms of this Contract and any subsequent amendments thereto.

ARTICLE 4: APPLICABLE LAWS

The parties agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, directives, issuances, ordinances, and laws in effect or promulgated during the term of this Contract.

ARTICLE 5: INDEPENDENT CONTRACTOR

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

ARTICLE 6: END USER AGREEMENTS

H-GAC acknowledges that the **END USER** may choose to enter into an End User Agreement with the **CONTRACTOR** through this Contract and that the term of said Agreement may exceed the term of the **H-GAC** Contract. However this acknowledgement is not to be construed as **H-GAC's** endorsement or approval of the End User Agreement terms and conditions. **CONTRACTOR** agrees not to offer to, agree to or accept from **END USER** any terms or conditions that conflict with or contravene those in **CONTRACTOR's** **H-GAC** contract. Further, termination of this Contract for any reason shall not result in the termination of the underlying End User Agreements entered into between **CONTRACTOR** and any **END USER** which shall, in each instance, continue pursuant to their stated terms and duration. The only effect of termination of this Contract is that **CONTRACTOR** will no longer be able to enter into any new End User Agreements with **END USERS** pursuant to this Contract. Applicable **H-GAC** order processing charges will be due and payable to **H-GAC** on

any End User Agreements surviving termination of this Contract between **H-GAC** and **CONTRACTOR** .

ARTICLE 7: SUBCONTRACTS & ASSIGNMENTS

CONTRACTOR agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Contract or any right, title, obligation or interest it may have therein to any third party without prior written notice to **H-GAC**. **H-GAC** reserves the right to accept or reject any such change. **CONTRACTOR** shall continue to remain responsible for all performance under this Contract regardless of any subcontract or assignment. **H-GAC** shall be liable solely to **CONTRACTOR** and not to any of its Subcontractors or Assignees.

ARTICLE 8: EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS

CONTRACTOR shall maintain during the course of its work, complete and accurate records of items that are chargeable to **END USER** under this Contract. **H-GAC**, through its staff or its designated public accounting firm, the State of Texas, or the United States Government shall have the right at any reasonable time to inspect copy and audit those records on or off the premises of **CONTRACTOR**. Failure to provide access to records may be cause for termination of this Contract. **CONTRACTOR** shall maintain all records pertinent to this Contract for a period of not less than five (5) calendar years from the date of acceptance of the final contract closeout and until any outstanding litigation, audit or claim has been resolved. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. **CONTRACTOR** further agrees to include in all subcontracts under this Contract, a provision to the effect that the subcontractor agrees that **H-GAC'S** duly authorized representatives, shall, until the expiration of five (5) calendar years after final payment under the subcontract or until all audit findings have been resolved, have access to, and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving any transaction relating to the subcontract.

ARTICLE 9: REPORTING REQUIREMENTS

CONTRACTOR agrees to submit reports or other documentation in accordance with the General Terms and Conditions of the Bid Specifications. If **CONTRACTOR** fails to submit to **H-GAC** in a timely and satisfactory manner any such report or documentation, or otherwise fails to satisfactorily render performance hereunder, such failure may be considered cause for termination of this Contract.

ARTICLE 10: MOST FAVORED CUSTOMER CLAUSE

If **CONTRACTOR**, at any time during this Contract , routinely enters 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 of that offering and this Contract shall be deemed to be automatically amended effective retroactively to the effective date of the most favorable contract, wherein **CONTRACTOR** shall provide the same prices, warranties, benefits, or terms to **H-GAC** and its **END USER**. **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** is of the opinion that any apparently more favorable price, warranty, benefit, or term charged and/or offered a customer during the term of this Contract is not in fact most favored treatment, **CONTRACTOR** shall within ten (10) business days notify **H-GAC** in writing, setting forth the detailed reasons **CONTRACTOR** believes aforesaid offer which has been deemed to be a most favored treatment, is not in fact most favored treatment. **H-GAC**, after due consideration of such written explanation, may decline to accept such explanation and thereupon this Contract 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**.

The Parties accept the following definition of routine: A prescribed, detailed course of action to be followed regularly; a standard procedure. *EXCEPTION: This clause shall not be applicable to prices and price adjustments offered by a bidder, or contractor, which are not within bidder's control [example; a manufacturer's bid concession], or to any prices offered to the Federal Government and its agencies.*

ARTICLE 11: SEVERABILITY

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

ARTICLE 12: DISPUTES

Any and all disputes concerning questions of fact or of law arising under this Contract, which are not disposed of by agreement, 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 **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, **CONTRACTOR** requests a rehearing from the Executive Director of **H-GAC**. In connection with any rehearing under this Article, **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. **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, **CONTRACTOR** shall proceed diligently with the performance of this Contract and in accordance with **H-GAC'S** final decision.

ARTICLE 13: 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 Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, but excluding its obligation to indemnify **H-GAC** described in Article 14, 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, lost 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 Contract.

ARTICLE 14: LIMIT OF H-GAC'S LIABILITY AND INDEMNIFICATION OF H-GAC

H-GAC'S liability under this Contract, 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, judgments, and liens arising as a result of **CONTRACTOR'S** negligent act or omission under this Contract. **CONTRACTOR** shall notify **H-GAC** of the threat of lawsuit or of any actual suit filed against **CONTRACTOR** relating to this Contract.

ARTICLE 15: TERMINATION FOR CAUSE

H-GAC may terminate this Contract for cause based upon the failure of **CONTRACTOR** to comply with the terms and/or conditions of the Contract; provided that **H-GAC** shall give **CONTRACTOR** written notice specifying **CONTRACTOR'S** failure. If within thirty (30) days after receipt of such notice, **CONTRACTOR** shall not have either corrected such failure, or thereafter proceeded diligently to complete such correction, then **H-GAC** may, at its option, place **CONTRACTOR** in default and the Contract shall terminate on the date specified in such notice. **CONTRACTOR** shall pay to **H-GAC** any order processing charges due from **CONTRACTOR** on that portion of the Contract actually performed by **CONTRACTOR** and for which compensation was received by **CONTRACTOR**.

ARTICLE 16: TERMINATION FOR CONVENIENCE

Either **H-GAC** or **CONTRACTOR** may cancel or terminate this Contract at any time by giving thirty (30) days written notice to the other. **CONTRACTOR** may be entitled to payment from **END USER** for services actually performed; to the extent said services are satisfactory to **END USER**. **CONTRACTOR** shall pay to **H-GAC** any order processing charges due from **CONTRACTOR** on that portion of the Contract actually performed by **CONTRACTOR** and for which compensation is received by **CONTRACTOR**.

ARTICLE 17: CIVIL AND CRIMINAL PROVISIONS AND SANCTIONS

CONTRACTOR agrees that it will perform under this Contract in conformance with safeguards against fraud and abuse as set forth by **H-GAC**, the State of Texas, and the acts and regulations of any funding entity. **CONTRACTOR** agrees to notify **H-GAC** of any suspected fraud, abuse or other criminal activity related to this Contract through filing of a written report promptly after it becomes aware of such activity.

ARTICLE 18: GOVERNING LAW & VENUE

This Contract 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 this Contract shall lie exclusively in Harris County, Texas. Disputes between **END USER** and **CONTRACTOR** are to be resolved in accord with the law and venue rules of the state of purchase. **CONTRACTOR** shall immediately notify **H-GAC** of such disputes.

ARTICLE 19: PAYMENT OF H-GAC ORDER PROCESSING CHARGE

CONTRACTOR agrees to sell its products to **END USERS** based on the pricing and other terms of this Contract, including, but not limited to, the payment of the applicable **H-GAC** order processing charge. On notification from an **END USER** that an order has been placed with **CONTRACTOR**, **H-GAC** will invoice **CONTRACTOR** for the applicable order processing charge. Upon delivery of any product/service by **CONTRACTOR** and acceptance by **END USER**, **CONTRACTOR** shall, within thirty (30) calendar days or ten (10) business days after receipt of payment, whichever is less, pay **H-GAC** the full amount of the applicable order processing charge, whether or not **CONTRACTOR** has received an invoice from **H-GAC**. For sales made by **CONTRACTOR** based on this contract, including sales to entities without Interlocal Contracts, **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 Contract. **H-GAC** reserves the right to take appropriate actions including, but not limited to, contract termination if **CONTRACTOR** fails to promptly remit **H-GAC's** order processing charge. In no event shall **H-GAC** have any liability to **CONTRACTOR** for any goods or services an **END USER** procures from **CONTRACTOR**.

ARTICLE 20: LIQUIDATED DAMAGES

Any liquidated damages terms will be determined between **CONTRACTOR** and **END USER** at the time **END USER's** purchase order is placed.

ARTICLE 21: PERFORMANCE BONDS FOR INDIVIDUAL ORDERS

Except as described below for fire apparatus, **CONTRACTOR** agrees to provide a Performance Bond at the request of **END USER** within ten (10) days of receipt of **END USER's** purchase order.

It shall be standard procedure for every order received for fire apparatus that a Performance Bond in the amount of the order be provided to the **END USER**. Failure of **CONTRACTOR** to provide such performance bond within ten (10) days of receipt of **END USER's** order may constitute a total breach of contract and shall be cause for cancellation of the order at **END USER's** sole discretion. **END USER** may choose to delete the requirement for a Performance Bond at **END USER's** sole discretion. If the bond requirement is waived, **END USER** shall be entitled to a price reduction commensurate with the cost that would have been incurred by **CONTRACTOR** for the bond.

ARTICLE 22: CHANGE OF CONTRACTOR STATUS

CONTRACTOR shall immediately notify **H-GAC**, in writing, of ANY change in ownership, control, dealership/franchisee status, Motor Vehicle license status, or name, and shall also advise whether or not this Contract 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 Contract.

ARTICLE 23: LICENSING REQUIRED BY TEXAS MOTOR VEHICLE BOARD [IF APPLICABLE]

CONTRACTOR will for the duration of this Contract maintain current licenses that are required by the Texas Motor Vehicle Commission Code. If at any time during this Contract period, any **CONTRACTOR'S** license is not renewed, or is denied or revoked, **CONTRACTOR shall** be deemed to be in default of this Contract unless the 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.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their duly authorized representatives.

Signed for **Houston-Galveston Area Council**, Houston, Texas: _____
Jack Steele, Executive Director

Attest for **Houston-Galveston Area Council**, Houston, Texas: _____
Deidre Vick, Director of Public Services
Date: _____, 20__

Signed for _____

Printed Name & Title: _____ Date: _____, 20__

Attest for _____

Printed Name & Title: _____ Date: _____, 20__

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

FORM CIQ

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

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.

OFFICE USE ONLY

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

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