

H-GAC

Houston-Galveston Area Council

P.O. Box 22777 · 3555 Timmons · Houston, Texas 77227-2777

Cooperative Agreement - Cummins Inc - Public Services -

SPECIAL PROVISIONS

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

ARTICLE 1: BIDS/PROPOSALS INCORPORATED

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

ARTICLE 2: END USER AGREEMENTS ("EUA")

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

ARTICLE 3: MOST FAVORED CUSTOMER CLAUSE

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

benefits, or terms to H-GAC and the END USER.

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

ARTICLE 4: PARTY LIABILITY

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

ARTICLE 5: GOVERNING LAW & VENUE

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

ARTICLE 6: SALES AND ORDER PROCESSING CHARGE

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

ARTICLE 7: LIQUIDATED DAMAGES

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

ARTICLE 8: INSURANCE

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

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

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

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

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

ARTICLE 9: PERFORMANCE AND PAYMENT BONDS FOR INDIVIDUAL ORDERS

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

ARTICLE 10: CHANGE OF STATUS

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

ARTICLE 11: TEXAS MOTOR VEHICLE BOARD LICENSING

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

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

H-GAC

Houston-Galveston Area Council

P.O. Box 22777 · 3555 Timmons · Houston, Texas 77227-2777

Cooperative Agreement - Cummins Inc - Public Services --

GENERAL PROVISIONS

This Agreement is made and entered into, by and between the Houston-Galveston Area Council hereinafter referred to as H-GAC having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027 and Cummins Inc, hereinafter referred to as the Contractor, having its principal place of business at 500 Jackson Street MC 60113, Columbus, IN 47201.

WITNESSETH:

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

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

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

ARTICLE 1: LEGAL AUTHORITY

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

ARTICLE 2: APPLICABLE LAWS

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

ARTICLE 3: INDEPENDENT CONTRACTOR

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

ARTICLE 4: WHOLE AGREEMENT

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

ARTICLE 5: SCOPE OF SERVICES

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

ARTICLE 6: PERFORMANCE PERIOD

This Agreement shall be performed during the period which begins Feb 01 2020 and ends Jan 31 2022. All services under this Agreement must be rendered within this performance period, unless directly specified under a written change or extension provisioned under Article 14, which shall be fully executed by both parties to this Agreement.

ARTICLE 7: PAYMENT OR FUNDING

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

ARTICLE 8: REPORTING REQUIREMENTS

If the Contractor fails to submit to H-GAC in a timely and satisfactory manner any report required by this Agreement, or otherwise fails to satisfactorily render performances hereunder, H-GAC may terminate this agreement with notice as identified in Article 15 of these General Provisions. H-GAC has final determination of the adequacy of performance and reporting by Contractor. Termination of this agreement for failure to perform may affect Contractor's ability to participate in future opportunities with H-GAC. The Contractor's failure to timely submit any report may also be considered cause for termination of this Agreement.

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

ARTICLE 9: INSURANCE

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

ARTICLE 10: SUBCONTRACTS and ASSIGNMENTS

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

ARTICLE 11: AUDIT

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

ARTICLE 12: EXAMINATION OF RECORDS

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

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

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

ARTICLE 13: RETENTION OF RECORDS

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

ARTICLE 14: CHANGES AND AMENDMENTS

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

ARTICLE 15: TERMINATION PROCEDURES

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

A. Convenience

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

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

B. Default

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

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

ARTICLE 16: SEVERABILITY

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

ARTICLE 17: FORCE MAJEURE

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

ARTICLE 18: CONFLICT OF INTEREST

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

ARTICLE 19: FEDERAL COMPLIANCE

Contractor agrees to comply with all federal statutes relating to nondiscrimination, labor standards, and environmental compliance. Additionally, for work to be performed under the Agreement or subcontract thereof, including procurement of materials or leases of equipment, Contractor shall notify each potential subcontractor or supplier of the Contractor's federal compliance obligations. These may include, but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) the Fair Labor Standards Act of 1938 (29 USC 676 et. seq.), (d) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990; (e) the Age Discrimination in Employment Act of 1967 (29 USC 621 et. seq.) and the Age Discrimination Act of 1974, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (f) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (g) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (h) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (i) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (j) any other nondiscrimination provisions in any specific statute(s)

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

ARTICLE 20: CRIMINAL PROVISIONS AND SANCTIONS

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

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

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

ARTICLE 21: INDEMNIFICATION AND RECOVERY

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

ARTICLE 22: LIMITATION OF CONTRACTOR'S LIABILITY

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

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

ARTICLE 23: TITLES NOT RESTRICTIVE

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

ARTICLE 24: JOINT WORK PRODUCT

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

ARTICLE 25: DISPUTES

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

ARTICLE 26: CHOICE OF LAW: VENUE

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

ARTICLE 27: ORDER OF PRIORITY

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

SIGNATURES:

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

Cummins Inc.

DocuSigned by:
Signature *Sriharsha Narravula*
9D99BEC6D456428...

Name Sriharsha Narravula

Title Sales Manager - National Accounts

Date 1/22/2020

H-GAC

DocuSigned by:
Signature *Chuck Wemple*
82EC270D5D61423...

Name Chuck Wemple

Title Executive Director

Date 12/23/2019

Attachment A
Cummins Inc
Auxiliary Power & Backup Generators
Contract No.: GE02-20

Applicable items are the models listed in the table below, as well as any pricing documents included in the awardee's bid response.

Product Code	Brand	Description	Pricing
GE02-20AB01	Cummins	C10 D6: Diesel; Output, standby/prime: 10 kW/9.1 kW; 60 Hz; Engine: Kubota 1.65L, 24.3 Hp	\$16,003
GE02-20AB02	Cummins	C15 D6: Diesel; Output, standby/prime: 15 kW/13.6 kW; 60 Hz; Engine: Kubota 1.65L, 24.3 Hp	\$16,082
GE02-20AB03	Cummins	C20 D6: Diesel; Output, standby/prime: 20 kW/18.2 kW; 60 Hz; Engine: Kubota 2.2L, 32.5 Hp	\$16,557
GE02-20AB04	Cummins	C25 D6: Diesel; Output, standby/prime: 25 kW/22.7 kW; 60 Hz; Engine: Cummins 3.3L, 69 Hp	\$17,899
GE02-20AB05	Cummins	C30 D6: Diesel; Output, standby/prime: 30 kW/27 kW; 60 Hz; Engine: Cummins 3.3L, 69 Hp	\$17,899
GE02-20AB06	Cummins	C35 D6: Diesel; Output, standby/prime: 35 kW/32 kW; 60 Hz; Engine: Cummins 3.3L, 69 Hp	\$18,081
GE02-20AB07	Cummins	C40 D6: Diesel; Output, standby/prime: 40 kW/36 kW; 60 Hz; Engine: Cummins 3.3L, 69 Hp	\$18,365
GE02-20AB08	Cummins	C50 D6: Diesel; Output, standby/prime: 50 kW/45 kW; 60 Hz; Engine: Cummins 3.3L, 99 HP	\$18,821
GE02-20AB09	Cummins	C50 D6C: Diesel; Output, standby/prime: 50 kW/45 kW; 60 Hz; Engine: Cummins 4.5L, 145 Hp	\$19,818
GE02-20AB10	Cummins	C60 D6: Diesel; Output, standby/prime: 60 kW/54 kW; 60 Hz; Engine: Cummins 3.3L, 99 Hp	\$20,508
GE02-20AB11	Cummins	C60 D6C: Diesel; Output, standby/prime: 60 kW/54 kW; 60 Hz; Engine: Cummins 4.5L, 145 Hp	\$20,890
GE02-20AB12	Cummins	C80 D6C: Diesel; Output, standby/prime: 80 kW/72 kW; 60 Hz; Engine: Cummins 4.5L, 145 Hp	\$21,898
GE02-20AB13	Cummins	C100 D6C: Diesel; Output, standby/prime: 100 kW/90 kW; 60 Hz; Engine: Cummins 4.5L, 145 Hp	\$25,032
GE02-20AB14	Cummins	C125 D6C: Diesel; Output, standby/prime: 125 kW/113 kW; 60 Hz; Engine: Cummins 4.5L, 145 Hp	\$25,592
GE02-20AB15	Cummins	C150 D6D: Diesel; Output, standby/prime: 150 kW/135 kW; 60 Hz; Engine: Cummins 6.7L, 324 Hp	\$34,342

GE02-20AB16	Cummins	C175 D6D: Diesel; Output, standby/prime: 175 kW/160 kW; 60 Hz; Engine: Cummins 6.7L, 324 Hp	\$37,775
GE02-20AB17	Cummins	C200 D6D: Diesel; Output, standby/prime: 200 kW/180 kW; 60 Hz; Engine: Cummins 6.7L, 324 Hp	\$39,343
GE02-20AB18	Cummins	DSHAD: Diesel; Output, standby/prime: 230 kW/209 kW; 60 Hz; Engine: Cummins 8.9L, 364 Hp	\$41,640
GE02-20AB19	Cummins	DQDAA: Diesel; Output, standby/prime: 250 kW/225 kW; 60 Hz; Engine: Cummins 8.9L, 464 Hp	\$57,476
GE02-20AB20	Cummins	DQDAB: Diesel; Output, standby/prime: 275 kW/250 kW; 60 Hz; Engine: Cummins 8.9L, 464 Hp	\$59,959
GE02-20AB21	Cummins	DQDAC: Diesel; Output, standby/prime: 300 kW/270 kW; 60 Hz; Engine: Cummins 8.9L, 464 Hp	\$61,933
GE02-20AB22	Cummins	DFEJ/QSZ13: Diesel; Output, standby/prime: 400 kW; 60 Hz; Engine: Cummins 14.9L/ 13L, 625HP	\$69,537
GE02-20AB23	Cummins	DFEJ: Diesel; Output, standby/prime: 450 kW/410 kW; 60 Hz; Engine: Cummins 14.9L, 755 Hp	\$72,161
GE02-20AB24	Cummins	DFEK: Diesel; Output, standby/prime: 500 kW/455 kW; 60 Hz; Engine: Cummins 14.9L, 755 Hp	\$72,161
GE02-20AB25	Cummins	DQCA: Diesel; Output, standby/prime: 600 kW/545 kW; 60 Hz; Engine: Cummins 23.2L, 1220 Hp	\$127,885
GE02-20AB26	Cummins	DQCB: Diesel; Output, standby/prime: 750 kW/680 kW; 60 Hz; Engine: Cummins 23.2L, 1220 Hp	\$149,453
GE02-20AB27	Cummins	DQCC: Diesel; Output, standby/prime: 800 kW/725 kW; 60 Hz; Engine: Cummins 23.2L, 1200 Hp	\$160,658
GE02-20AB28	Cummins	DQFAC: Diesel; Output, standby/prime: 900 kW/818 kW; 60 Hz; Engine: Cummins 30.5L, 1490 Hp	\$185,795
GE02-20AB29	Cummins	DQFAD: Diesel; Output, standby/prime: 1000 kW/900 kW; 60 Hz; Engine: Cummins 30.5L, 1490 Hp	\$185,795
GE02-20AB30	Cummins	C20 N6 Natural gas; Output, standby 20 kW; 60 Hz; Engine: Cummins 2.4L, 40 Hp	\$11,810
GE02-20AB31	Cummins	C25 N6 Natural gas; Output, standby 25 kW; 60 Hz; Engine: Cummins 2.4L, 40.6 Hp	\$11,868
GE02-20AB32	Cummins	C30 N6 Natural gas; Output, standby 30 kW; 60 Hz; Engine: Cummins 2.4L 49.5 Hp	\$12,268
GE02-20AB33	Cummins	C36 N6 Natural gas; Output, standby 36 kW; 60 Hz; Engine: Cummins 2.4L, 70 Hp	\$13,680

GE02-20AB34	Cummins	C40 N6 Natural gas; Output, standby 40 kW; 60 Hz; Engine: Cummins 2.4L, 70 Hp	\$14,572
GE02-20AB35	Cummins	C45 N6 Natural gas; Output, standby 45 kW; 60 Hz; Engine: Cummins 2.4L, 85 Hp	\$14,572
GE02-20AB36	Cummins	C50 N6 Natural gas; Output, standby 50 kW; 60 Hz; Engine: Cummins 2.4L, 85 Hp	\$15,405
GE02-20AB37	Cummins	C60 N6 Natural gas; Output, standby 60 kW; 60 Hz; Engine: Cummins 5.9L 101 Hp	\$16,605
GE02-20AB38	Cummins	C70 N6: Natural gas; Output, standby 70 kW; 60 Hz; Engine: Ford 5.9L, 163 Hp	\$17,978
GE02-20AB39	Cummins	C80 N6: Natural gas; Output, standby 80 kW; 60 Hz; Engine: Ford 5.9L, 163 Hp	\$19,255
GE02-20AB40	Cummins	C100 N6: Natural gas; Output, standby 100 kW; 60 Hz; Engine: Ford 5.9L, 163 Hp	\$23,125
GE02-20AB41	Cummins	C125 N6: Natural gas; Output, standby 125 kW; 60 Hz; Engine: Ford 8.9L, 205 Hp	\$28,082
GE02-20AB42	Cummins	C150 N6: Natural gas; Output, standby 150 kW; 60 Hz; Engine: Ford 8.9L, 240 Hp	\$32,525
GE02-20AB43	Cummins	C200 N6: Natural gas; Output, standby 200 kW; 60 Hz; Engine: PSI 11.1L, 302 Hp	\$75,640
GE02-20AB44	Cummins	C250 N6: Natural gas; Output, standby 250 kW; 60 Hz; Engine: Cummins 14L, 383 Hp	\$92,040
GE02-20AB45	Cummins	C300 N6: Natural gas; Output, standby 300 kW; 60 Hz; Engine: Cummins 14L, 470 Hp	\$99,282
GE02-20AB46	Cummins	C350 N6: Natural gas; Output, standby 350 kW; 60 Hz; Engine: Cummins GTA 19L, 530 Hp	\$121,180
GE02-20AB47	Cummins	C400 N6: Natural gas; Output, standby 400 kW; 60 Hz; Engine: Cummins GTA 28L, 701 Hp	\$160,335
GE02-20AB48	Cummins	C450 N6: Natural gas; Output, standby 450 kW; 60 Hz; Engine: Cummins GTA 28L, 701 Hp	\$181,740
GE02-20AB49	Cummins	C500 N6B: Natural gas; Output, standby 500 kW; 60 Hz; Engine: Cummins GTA 28L, 770 Hp	\$190,035
GE02-20AB50	Cummins	C550 N6: Natural gas; Output, standby 550 kW; 60 Hz; Engine: Cummins GTA 37.7L, 850 Hp	\$221,276
GE02-20AB51	Cummins	C600 N6: Natural gas; Output, standby 600 kW; 60 Hz; Engine: Cummins GTA 50.3L, 1135 Hp	\$243,976
GE02-20AB52	Cummins	C650 N6: Natural gas; Output, standby 650 kW; 60 Hz; Engine: Cummins GTA 50.3L, 1135 Hp	\$247,056
GE02-20AB53	Cummins	C750 N6: Natural gas; Output, standby 750 kW; 60 Hz; Engine: Cummins GTA 50.3L, 1135 Hp	\$289,032
GE02-20BB01	Cummins (Onan)	Onan P2500i: 2500 Peak Watt Gasoline Portable Generator; 60Hz; 120V; Recoil start	\$597
GE02-20BB02	Cummins (Onan)	Onan P4500i: 4500 Peak Watt Gasoline Portable Generator; 60Hz; 120V; Electric-recoil start	\$856
GE02-20BB03	Cummins (Onan)	Onan P9500: 9500 Peak Watt Gas/ LPG Portable Generator; 60Hz; 120V/240V; Electric-recoil start	\$889
GE02-20DC01	Cummins	C70D2RE: T4F Mobile 70 kW standby output/ 135 kW prime output; 60Hz: Cummins QSB 4.5L	\$59,900

GE02-20DC02	Cummins	C100D2RE: T4F Mobile 100 kW standby output/ 135 kW prime output; 60Hz: Cummins QSB 4.5L	\$67,913
GE02-20DC03	Cummins	C150D2RE: T4F Mobile 150 kW standby output/ 135 kW prime output; 60Hz: Cummins QSB 6.7L	\$82,509
GE02-20DC04	Cummins	C200D2RE: T4F Mobile 200 kW standby output/ 180 kW prime output; 60Hz: Cummins QSB 6.7L	\$98,599
GE02-20DC05	Cummins	CD275D2RE: T4F Mobile 275 kW standby output/ 250 kW prime output; 60Hz: Cummins QSL 9L	\$129,193