



**HOUSTON-GALVESTON AREA COUNCIL  
COOPERATIVE PURCHASING PROGRAM  
Invitation to Bid (ITB)  
Earth Moving & Construction Equipment  
Solicitation Number: EM12-21**

EVENT	DATE
<b>ISSUED:</b>	Tuesday, July 06, 2021
<b>PRE-PROPOSAL/BID CONFERENCE DATE:</b>	Tuesday, July 20, 2021 @ 9:00 a.m. CST Please see Part VII for further details.
<b>QUESTIONS DEADLINE:</b>	Tuesday, July 27, 2021 @ NOON CST
<b>CLOSING DATE / SUBMISSION DEADLINE:</b>	Tuesday, August 17, 2021 @ 1:00 p.m. CST
<b>RESPONSE OPENING</b>	Tuesday, August 17, 2021 @ 2:00 p.m. CST
<b>BOARD APPROVAL DATE:</b>	Tuesday, October 19, 2021
<b>ESTIMATED CONTRACT START DATE:</b>	December 2021
<b>FORMAT:</b>	One (1) electronic copy in PDF format. Pricing sheets must be submitted in Excel format.

**SUBMISSION:** Responses are accepted by electronic submission only. Instructions and upload link to submit can be found listed under the above named solicitation at <https://www.hgacbuy.org/bid-notices>

If technical issues with the ShareFile System arise, preventing any Respondent from submitting a response within the two (2) hours preceding the deadline, the solicitation due date and time may be automatically extended for a period of 24 hours. Any technical issue must be with the ShareFile system and affect all respondents. H-GAC will verify the technical issue or unavailability of the ShareFile system. Technical issues localized to a single Respondent will not be considered cause for an extension. **It is strongly recommended that submissions be uploaded no later than two (2) hours prior to the stated deadline.** H-GAC is not responsible for attempting to resolve any technical issues occurring two (2) hours before the submission deadline, nor is H-GAC responsible for incomplete or late submissions.

Recording of submission time and date will occur via ShareFile. Submissions uploaded after the deadline will not be accepted or opened. Responses may be submitted any time prior to the submission deadline. To satisfy any required public opening for RFP's and RFQ's, H-GAC will post only the names of the companies which submitted responses as soon as possible after the closing date. For ITB's, responses will be opened live online, those interested must attend the bid opening to view the responses. All times and dates for these activities are posted under the above named solicitation at <https://www.hgacbuy.org/bid-notices>.

**SIGNATURE PAGE**

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

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

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

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

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## **PART I – GENERAL INFORMATION**

### **Houston-Galveston Area Council (H-GAC) Background**

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

### **About The Cooperative**

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

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

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

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

### **Objective/Purpose**

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

**Additional Resources and Forms**

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

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

**Contract Term**

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

**No Guarantee of Usage**

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

**Multiple Awards**

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

**Proforma Contract**

A sample contract is available to view at the link provided above which the successful Respondent will be expected to sign. The actual final contract will be the same or nearly the same as the Pro-Forma. NOTE: Successful Respondents MAY NOT process any purchase orders for sales until all contract documents have been completely executed.

**Post Award Meeting**

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

**Solicitation Requirements**

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

**1. Contractor Orientation and Training**

H-GAC believes that Contractor's familiarity with the operational policies and requirements of the Cooperative Purchasing Program is a key factor in achieving Customer satisfaction. The Contact Person listed on Contractor Status and Contact Form or an alternate, will be required to participate in an H-GAC vendor orientation and training as soon as possible after contract award. In addition, other Contractor's staff who will be involved in any way with the HGACBuy Program should participate in orientation. The orientation may be presented as a teleconference or webinar or may be held in H-GAC's offices as determined by H-GAC and Contractor to be the most efficient and effective form of delivery. Please visit <https://www.hgacbuy.org/events> for more information.

**2. Nationwide Sales Opportunity**

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

**3. Corporate/Sales Commitment**

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

**4. Manufacturer as Respondent**

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

**5. Dealer/Reseller as Respondent**

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

**6. Approval by Manufacturer**

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

**7. Contractor Status**

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

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

**8. Administrative Fee**

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

For motor vehicles, this processing charge is paid by the HGACBuy Customer.

**9. Licensing and Permitting Requirements for Motor Vehicle Sales**

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

- a. Contractor/Supplier will be responsible for securing any and all inspections required by law, including State Inspection stickers. Any fee charged for these inspections is the responsibility of the Contractor/Supplier.
- b. At the time of delivery to the Customer, Contractors/Suppliers are required to provide temporary paper license tags/plates for motor vehicles or other equipment required by the State of Texas to be registered for operation on public highways.
- c. TEXAS OCCUPATIONS CODE, TITLE 14, CHAPTER 2301 (Formerly known as "The Texas Motor Vehicle Commission Code"):
  - i. Section 2301.251: License Required: Generally (a) Unless a person holds a license issued under this chapter authorizing the activity, the person may not (1) engage in business as, serve in the capacity of, or act as a dealer, manufacturer, distributor, converter, representative, vehicle lessor, or vehicle lease facilitator in this state.
  - ii. Sec. 2301.252: License required: Sale of New Motor Vehicles:(a) A person may not engage in the business of buying, selling, or exchanging new motor vehicles unless the person: (1) holds a franchised dealer's license issued under this chapter for the make of new motor vehicle being bought, sold, or exchanged; or (2) is a bona fide employee of the holder of a franchised dealer's license.
- d. Licensed Franchised Dealers submitting a Response for new cabs & chassis with installed bodies and other equipment, by this Statute, are required to employ properly licensed converters for the conversions of the new motor vehicles.
- e. The Act of Submitting a Response is regarded as doing business, as the entity is soliciting a sale. Accordingly, each Respondent must be a licensed franchised dealer at the time the Response is submitted.
- f. The units bid shall be in full and complete compliance with all applicable safety and pollution requirements and regulations in effect at the time of submission. This includes but is not limited to standards established by the United States Department of Transportation, including the Federal Motor Vehicle Safety Standards (FMVSS), the Occupational Safety and Health

Administration (OSHA), the Environmental Protection Agency (EPA), the Texas Department of Transportation and the Texas Commission on Environmental Quality (TCEQ).

Warranty

All equipment must carry the manufacturer's standard warranty and be guaranteed for a minimum of one year/1000 hours against defects in materials, workmanship and performance. The warranty will begin on the date of acceptance by the end user, during which, the vendor must replace or repair defective machines or components, at no expense to H-GAC Members.



## **PART II – SPECIFICATIONS**

### **Project Background**

H-GAC is soliciting Responses for selecting qualified manufacturers, distributors, installers and service providers of Earth Moving & Construction Equipment to make these types of products and services available to Customers of the HGACBuy Cooperative Purchasing Program under blanket type contracts. Customers may require selective acquisitions of equipment and/or services OR full turnkey projects necessitating additional services, training and maintenance agreements. This solicitation may include a request for a discount percent off price catalog, category, or manufacturer, or price list for supplies, materials, or not to exceed hourly rates for installation or repair. Respondents are not required to provide offerings on all categories.

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

### **General Requirements**

- a. Required safety decals must be furnished and affixed at the operator's station and any hazardous area and will include necessary warnings and precautions.
- b. The equipment provided must meet or exceed all federal and Texas state safety, health, and noise regulations in effect and applicable to equipment furnished at the time of manufacture.
- c. Respondent must include specifications, brochures, warranty information, and any other relevant product information with their bid package.
- d. All parts necessary for the unit to be complete and ready for operation or which are normally furnished as standard equipment will be furnished by the vendor. All parts will conform in strength, quality and workmanship to the accepted standards of the industry.
- e. The unit must be completely assembled, adjusted, and all equipment including standard and supplemental equipment must be installed and the unit made ready for continuous operation.

### **Standard Equipment & Accessories**

All products must be the manufacturer's complete standard equipment and accessories, with all basic features as shown in the manufacturer's printed literature, except as may be explicitly modified by these specifications, or by an H-GAC Member. **Note:** Respondent must supply a detailed specification sheet for each product code bid on Form D. These sheets should detail model names / numbers and components, and performance included in the price quoted for each of these line items.

### **Final Contract Deliverables**

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

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

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



**Product Codes and Categories:**

This Solicitation is divided into twenty-seven (27) separate but related categories. Respondent is advised to offer a wide array, or catalog, of services within each service category listed below. When submitting a response, Respondent may choose to give a response on any of the categories or all. No additional weighted value will be given to a respondent who responds to more than one or all categories listed. The categories are as follows:

- |   |                         |
|---|-------------------------|
| A1. Aerial Lifts - Self-Propelled, Articulating Boom            | M. Loaders – Crawler    |
| A2. Aerial Lifts - Self-Propelled, Scissor Lifts, Rough Terrain | N. Loaders – Wheeled    |
| A3. Aerial Lifts - Self-Propelled, Telescoping Boom             | O. Material Handlers    |
| B. Backhoe Loaders  | P. Pallet Jacks         |
| C. Cranes   | Q. Road Wideners        |
| D. Dozers - Crawler   | R. Scrapers             |
| E. Dozers - Wheeled   | S. Scrapers - Elevating |
| F. Dump Trucks - Articulated                                    | T. Screening            |
| G. Excavators   | U. Shredder             |
| H. Forklifts  | V. Skid Steers          |
| I. Graders  | W. Telehandlers         |
| J. Harrow   | X. Trenchers            |
| K. Landfill compactors  | Y. Trommels             |
| L. Loaders – Compact Track                                      | Z. Windrow Turners      |

**Note: “Unpriced/unpublished” options cannot be quoted on the Product Pricing Worksheet and may not be sold through this contract.**

Each base Product item covered by this solicitation will be identified by the Respondent with a unique H-GAC alpha product code. Respondent will build each specific equipment model through product code tables, as shown on Form-D for those product categories they intend to participate. These unique product codes must be inserted on Form D along with the associated description and pricing.

Respondent may only use a product code one time. If a different configuration cannot be built through the table, the difference must be shown as an optional upgrade/downgrade on Form E to a specific product code already listed. This pricing should be priced using a differential amount based on the bid price for the base Product Item quoted on Form D.

For Example:

Scraper, Bell, 1-50-gal, 2 ft, 11-20 ft, 1-5 ft, 1-20 hp, would be identified by **Product Code R12ABBA**

First Character	Second Character	Third Character	Fourth Character	Fifth Character	Sixth Character	Seventh Character
Categories	Manufacturer	Fuel Capacity	Height - Top of Cab	Overall Length	Overall Width	Net Power
<b>R. Scraper</b>	<b>11. Allu</b>	<b>A. 1-50 gal</b>	<b>A. 1 ft</b>	<b>A. 1-10 ft.</b>	<b>A. '1-5 ft.</b>	<b>A. 1-20 hp</b>
	<b>12. Bell</b>	<b>B. 51-100 gal</b>	<b>B. 2 ft</b>	<b>B. 11-20 ft.</b>	<b>B. 6-10 ft.</b>	<b>B. 21-40 hp</b>

**Applicable Third-Party Specifications**

All Product Items offered must meet or exceed all current applicable standards, including but not limited to the following. In case of a conflict between any Product Item requirement of this solicitation and any of these additional standards, these standards will take precedence.

EPA	Exhaust Emission Standards (40 CFR 85) as issued under authority of the Clean Air Act (PL 101-549), as amended (42 USC 1857)
ASTM A 606	Standard Specification for Steel Sheet and Strip, Hot-Rolled and Cold-Rolled, High Strength, Low-Alloy, with Improved Corrosion Resistance
NTEA	Hydraulic conversion hoist classification charts
SAE Standards	<p>J53 Minimum Performance Criteria for Emergency Steering of Wheeled E/M Machines</p> <p>J185 Access Systems for Off-Road Machines (ingress/egress)</p> <p>J231 Performance Criteria for Falling Object Protective Structures (FOPS)</p> <p>J236 Service Braking System – Graders</p> <p>J237 Service Braking System – Front-End Loaders and Dozers</p> <p>J276 Steering Frame Lock for Articulated Loaders</p> <p>J319 Service Braking System – Scrapers</p> <p>J321 Tire Guards for Protection of Operator of Earth-Moving Haulage Machines</p> <p>J386 Operator Restraint System for Off-Road Work Machines</p> <p>J728 Component Nomenclature – Scrapers</p> <p>J729 Nomenclature and Specification Definitions – Dozers</p> <p>J731 Component Nomenclature – Loaders</p> <p>J732 Specification Definitions, Loaders</p> <p>J734 Component Nomenclature - Dumper Trailer</p> <p>J737 Hole Spacing for Scraper and Dozer Cutting Edges</p> <p>J739 Cutting Edge, Curved Grader</p> <p>J741 Capacity Rating - Scraper, Open Bowl</p> <p>J742 Capacity Rating, Loader Bucket</p> <p>J749 Drawbars, Crawler Tractors</p> <p>J818 Rated Operating Load for Loaders</p> <p>J870 Component Nomenclature – Graders</p> <p>J899 Operator's Seat Dimensions for Off-Road, Self-Propelled Work Machines</p> <p>J957 Capacity Rating - Scrapers, Elevating</p> <p>J994 Backup Alarm</p> <p>J1014 Classification and Nomenclature - Towing Winch for Crawler Tractor</p> <p>J1016 Component Nomenclature – Dumpers</p> <p>J1026 Braking Performance - Crawler Tractors and Crawler Loaders</p> <p>J1029 Lighting and Marking of Construction/Earth-Moving Machinery</p> <p>J1040 Performance Criteria for Rollover Protective Structures (ROPS)</p> <p>J1097 Hydraulic Excavator Lift Capacity</p> <p>J1193 Nomenclature and Dimensions for Hydraulic Excavators</p> <p>J1265 Capacity Rating, Dozer Blades</p> <p>J1315 Off-Road Tire and Rim Selection and Application</p> <p>J1349 Engine Power Test Code, Spark Ignition and Compression, Net Engine Power</p> <p>J1356 Performance Criteria for Falling Object Guards for Excavators</p> <p>J1371 Hydraulic Swing Performance</p> <p>J1384 Vibration Performance of Operator Seats</p> <p>J1511 Steering for Off-road, Rubber-Tired</p> <p>J2331 Operator's Field of View</p>

CFR, Title 40, Part 85	Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines, Environmental Protection Agency
DOT, Title 49, Part 393	Liquid Fuel Systems of Commercial Motor Vehicles, Certification of Fuel Tank
FMVSS (Public Law 89- 563)	FMVSS 108 Lamps, Reflective Devices, and Associated Equipment. FMVSS 209 Seat Belt assemblies for Passenger Cars, Multipurpose Passenger Vehicles, Trucks, and Buses FMVSS 210 Seat Belt Assembly Anchorages - Passenger Cars, Multipurpose Passenger Vehicles, Trucks, and Buses FMVSS 301 Fuel System Integrity
Federal Standards	No. 595A Colors No. TT-C-520B Coating Compound, Bituminous, Solvent Type, Underbody for Motor Vehicles
OSHA	Construction Safety and Health Regulations Section 1926.601 - Motor Vehicles

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## **PART III – SOLICITATION SUBMISSION CONTENTS**

Submissions must include the information described below.

### ***A. Summary Letter/Narrative Statement***

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

### ***B. Signature Page and all Forms as Listed on last page of this RFP***

Submit completed and signed Signature Page (located on page 2) and all required/applicable forms of the checklist provided on the last page of this solicitation.

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

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

**The applicable section of this form must be completed, signed and returned with the submission, failure to return this signed form and any applicable required good faith effort documentation may result in the submission being deemed non-responsive.**

### ***D. Warranty, Service and Manual Documents***

Respondent must submit detailed Warranty, Service, Technical Manual, or other relevant information or booklets with the Response. If Respondent submits a warranty which does not meet any minimum stated requirements in the Solicitation, Respondent agrees by submission of the Response that such warranty is automatically amended to meet the minimums.

### ***E. Geographic Areas Served Form***

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

1. Describe the company's Geographic Coverage and ability to meet the needs of Customers throughout the United States.
2. Detail the dealer network (nationwide) and describe how it will be used to provide products/services to H-GAC members nationwide.
3. Submit an approval letter from each manufacturer; authorization letters must include the regions in which equipment may be sold or serviced.

***F. Planned Authorized Distributor Form (As Applicable)***

1. Provide a listing of all planned retailers/distributors, etc. that may be used during the term of this contract to deliver goods or services (awarded contractor remains responsible for the terms of the contract).
2. For each planned retailer/distributor, etc. Attach a current W-9.
3. If no authorized distributors are planned for use during a subsequent, then please provide a statement in your response that indicates no intent to use retailers/distributors, etc.

***G. Service Facilities and Personnel***

Submit details regarding at least the following:

1. Sales office locations
2. Factory and Service Center Locations
3. Technical and maintenance services provided after a sale, and on what basis
4. Warranties, policies and procedures for handling problems and returns
5. Customer training provided, and on what basis?

***H. Licenses/Certifications***

Provide any and all licenses and certificates as required by the Solicitation.

***I. Products and Pricing Forms D and E (as applicable)***

Submit a completed Form D and Form E in excel format as applicable to the category offerings priced utilizing the appropriate product codes outlined in the Specifications section of this solicitation. Include a completed Form E Published Options Pricing (as applicable) pricing acceptable options that are not included. Respondent must provide: (if Joint response forms D&E are supplied only by Lead Respondent):

1. All items offered must be identified by an alpha Product Code. Respondent must build the specific apparatus through product code table for the applicable category being priced (See Product Code Tables). These unique product codes must be inserted on Form D along with the associated description and pricing. A product code can only be used one time. Pricing must be provided in either an itemized/component format.
2. Pricing must be equal to or better than pricing normally offered to local governments.
3. Submit pricing exclusive of freight, which will be added as a separate PO item at the time of each purchase, specific to the individual H-GAC Member's location, calculated as per carrier invoice.
4. List pricing of those options on Form E in a Not to Exceed Rate or Not to Exceed Cost that are not included in a catalog (e.g. extended warranty, additional training, quantity discounts) or other incentive programs which will be made available through the program on Form E Published Options Pricing.
5. If submitting a response in more than one Product Category, a single Form E will suffice. However, each Form must be subdivided for each H GAC Product Category being addressed in the response.
6. If a different configuration cannot be built through the table, the difference must be shown as an optional upgrade/downgrade on Form E to a specific product code already listed. This pricing must be submitted using a differential amount based on bid price for the base Product quoted on Form D.

**Note: Options bid on Form E Published Options Pricing must be associated with the manufacturer/product code being proposed on Form D Offered Items Pricing Sheet. **Published Options are not allowed to be sold independently off any awarded contract.****

## **PART IV – TERMS AND CONDITIONS**

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

### **A. H-GAC Terms and Conditions**

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

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

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

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

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

### **B. Compliance with Federal Law, Regulations, and Executive Orders**

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

### **C. Anti-Competitive Behavior**

Respondent will not collude, in any manner, or engage in any practice, with any other Respondent(s) which may restrict or eliminate competition or otherwise restrain trade.

#### **D. Contact by Respondent**

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

#### **E. Updates to the Solicitation**

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

#### **F. Interpretation of Specifications**

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

#### **G. Suspension and Debarment**

Debarment and Suspension (Executive Orders 12549 and 12689) – A contract award (2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1966 Comp. p. 189) and 12689 (3 CFR Part 1989 Comp. p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to the Federal Rule above, Respondent certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas and at all times during the term of the Contract neither it nor its principals will be debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas Respondent shall immediately provide the written notice to H-GAC if at any time the Respondent learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. H-GAC may rely upon a certification of the Respondent that the Respondent is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless the H-GAC knows the certification is erroneous.



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

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

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

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

NOTE: The term DBE as used in this solicitation is understood to encompass all programs/business enterprises such as: Small Disadvantaged Business (SDB), Historically Underutilized Business (HUB), Minority Owned Business Enterprise (MBE), Women Owned Business Enterprise (WBE) and Disabled Veteran Business Enterprise (DVBE) or other designation as issued by a certifying agency.

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

### **I. H-GAC Responsibilities**

H-GAC is responsible for project administration and final decisions on all contractual matters. H-GAC has sole discretion and reserves the right to cancel this Solicitation or to reject any or all submissions received prior to the contract award. H-GAC reserves the right to waive any formalities concerning this Solicitation, or to reject any or all submissions or any part thereof. H-GAC reserves the right to refuse to award a contract to or enter into a transaction with an apparent low bidder if that bidder is indebted to H-GAC. H-GAC reserves the right to accept or reject any Product Item or option offered. Additionally, all options included in Respondent's response and accepted by H-GAC are understood to be included in any contract.

## **J. Structure of Response**

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

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

Respondent must complete and sign a Signature Page and all other required forms and, if contracted, will be solely responsible for all contractual requirements including administration, processing of purchase orders and handling of payments for transactions which may involve other dealers/distributors who actually deliver the products or services. Unless stated otherwise, a manufacturer or wholesale distributor Respondent is assumed to have a documented relationship with their dealer network where that dealer network is informed of, and authorized to accept, purchase orders pursuant to any Contract resulting from this Solicitation on behalf of the manufacturer or wholesale distributor Respondent. Any listed dealer will be considered a sub-contractor of the Respondent.

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

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

Contractor may sell through HGACBuy anywhere subject to compliance with applicable laws and regulations. If the market structure in which Contractor operates requires a contract assignment for any sale, H-GAC may assign the contract to a Manufacturer or to another Dealer(s). Such assignment must be specific and detailed and must be approved by the Contractor and H-GAC.

**Note: Respondent can only be a party to one response structure.**

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

## **K. Line Item Bids**

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

## **L. Percentage Discount from Catalog or Category**

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

## ***M. Contract Price Adjustments***

### ***1. Price Decreases***

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

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

### ***2. Price Increase***

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

### ***3. Price Changes***

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

For published catalogs and price sheets as part of an H-GAC contract, requests to amend the contract to reflect any new published catalog or price sheet must be submitted whenever the manufacturer publishes a new document. The request must include the new catalog or price sheet.

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

### ***4. Requesting Price Increase/Required Documentation***

Contractor must submit a written notification at least thirty (30) calendar days prior to the requested effective date of the change, setting the amount of the increase, along with an itemized list of any increased prices, showing the Contractor's current price, revised price, the actual dollar difference and the percentage of the price increase by line item.

Price change requests must include H-GAC Forms D Offered Item Pricing and E Options Pricing, or the documentation used to submit pricing in the original Response and be supported with substantive documentation (e.g. manufacturer's price increase notices, copies of invoices from suppliers, etc.) clearly showing that Contractor's actual costs have increased per the applicable line item bid. The Producer Price Index (PPI) may be used as partial justification, subject to approval by H-GAC, but no price increase based solely on an increase in the PPI will be allowed. This documentation should be submitted in Excel format to facilitate analysis and updating of the website. The letter and documentation must be sent to the Bids and Specifications manager, William Burton at [William.Burton@h-gac.com](mailto:William.Burton@h-gac.com)

### **5. Review/Approval of Requests**

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

## **N. Contract Item Changes**

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

## **O. Change Orders**

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

## **P. Pricing Discrepancies**

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

### **Q. Requirements Applicable to Physical Goods**

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

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

### **R. Deliveries/Shipping Terms**

The Contractor agrees to make deliveries only upon receipt of authorized Customer Purchase Order acknowledged by H-GAC. Delivery made without such Purchase Order will be at Contractor's risk and will leave H-GAC the option of canceling any contract awarded to the Contractor. The Contractor must secure and deliver any item within five (5) working days or in conformance with any terms alternately established with the Customer.

Shipping must be F.O.B. Destination to the delivery location designated on the Customer purchase order. The Contractor will retain title and control of all goods until delivery is completed and the Customer has accepted the delivery. All risk of transportation and all related charges are the responsibility of the Contractor. The Customer will notify the Contractor and H-GAC promptly of any damaged goods and will assist the Contractor in arranging for inspection. The Contractor must file all claims for visible or concealed damage. Unless otherwise stated in the Bid Form or Specifications, deliveries must consist only of new and unused merchandise.

### **S. Restocking (Exchanges and Returns)**

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

### **T. Samples**

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

### **U. Measurements**

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

## **V. Product Codes**

Unless otherwise addressed in this Solicitation, the following requirements will apply:

- a. Each Product/Service offered will be identified using an H-GAC Product Code, as described in this Solicitation. Respondent can offer only one (1) product for any product code. (ex. Respondent submits a response for code ABC and has another offering that meets the requirements for ABC. Respondent may not submit two (2) offerings for code ABC. The alternate offering that also meets the requirements for ABC must be offered as an option "upgrade/downgrade" to ABC.
- 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 Offered Items Pricing.
- c. Base bid items and the associated product codes are referenced in the Solicitation and on any applicable pricing form.
- d. Selection of product codes for which to submit an offer is at Respondent's discretion.

## **W. 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 must include any Manufacturer's/Dealer's code number. If no Manufacturer's/Dealer's code number exists, Respondent should create one.
- c. Prices for all offered options must include any installation or mounting required to make it a fully functional component of the Product, unless otherwise stated in the Response.
- d. "Suggested" or "Other" options may be listed for any Product in the Solicitation, Respondent is encouraged to quote pricing for such options. The extent of offered options in any response may be taken into consideration as part of the award criteria, at H-GAC's sole discretion.
- e. Respondent is encouraged to include options for non-equipment items that may be applicable to a sale, such as: Extended Warranties, Maintenance Agreements, Buy-back or Trade-In Agreements, Quantity or Special Discounts, Extended Training, etc.

### **Required Options**

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

### **Upgrade/Downgrade Options**

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

### **X. Manuals**

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

### **Y. Out of Stock/Product Recalls/Discontinued Products**

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

### **Z. Standard Features**

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

### **AA. Brand Name or Equivalent**

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

### **BB. Warranties, Sales and Service**

Warranties must be the manufacturer's standard and inclusive of any other warranty requirements stated in the Solicitation; any warranties offered by a dealer will be in addition to the manufacturer’s standard warranty and will not be a substitute for such. Pricing for any Product must be inclusive of the standard warranty.

Contractor is responsible for the execution and effectiveness of all product warranty requests and any claims, Contractor agrees to respond directly to correct warranty claims and to ensure reconciliation of warranty claims that have been assigned to a third party.



**CC. Variances**

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

**DD. HGACBuy Order Processing Charge**

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

**EE. Distributors, Vendors, Resellers etc.**

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

**FF. Tax Exempt Status**

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

**GG. Payment for Work**

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

**HH. Payment Terms/Pre-payment/Quantity Discounts**

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

**II. Inspection/Testing**

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

**JJ. Background Checks**

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

**KK. Architecture and Engineering Services**

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

**LL. Conflict of Interest Questionnaire (If awarded a contract)**

Chapter 176 of the Texas Local Government Code requires contractors contracting or seeking to contract with H-GAC to file a conflict of interest questionnaire (CIQ) if they have an employment or other business relationship with an H-GAC officer or an officer's close family member. The required questionnaire and instructions are located on the H-GAC website or at the Texas Ethics Commission website <https://www.ethics.state.tx.us/forms/conflict/> H-GAC officers include its Board of Directors and Executive Director, who are listed on this website. Respondent must complete and file a CIQ with the Texas Ethics Commission if an employment or business relationship with H-GAC office or an officer's close family member as defined in the law exists.

**MM. Certificate of Interested Parties Form – Form 1295 (If awarded a contract)**

As required by Section 2252.908 of the Texas Government Code. H-GAC will not enter a Contract with a Contractor unless (i) the Contractor submits a disclosure of interested parties form to H-GAC at the time the Contractor submits the contract H-GAC, or (ii) the Contractor is exempt from such requirement. The required form and instructions are located at the Texas Ethics Commission website [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm). Respondents who are awarded a Contract must submit their Form 1295 with the signed Contract to H-GAC.

**NN. Prohibition on Contracts with Companies Boycotting Israel Certification (If awarded a contract)**

As required by Chapter 2271 of the Texas Local Government Code the Contractor must verify that it 1) does not boycott Israel; and 2) will not boycott Israel during the term of the Contract. Pursuant to Section 2271.001, Texas Government Code:

1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.

**OO. No Excluded Nation or Terrorist Organization Certification (if awarded a contract)**

As required by Chapter 2252 of the Texas Government Code the Contractor must certify that it is not a company engaged in active business operations with Sudan, Iran, or a foreign terrorist organization – specifically, any company identified on a list prepared and maintained by the Texas Comptroller under Texas Government Code §§806.051, 807.051, or 2252.153. (A company that the U.S. Government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to the contract prohibition.)

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

Pursuant to 2 CFR 200.216, Contractor shall not offer equipment, services, or system that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. “Covered telecommunications equipment or services means 1) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); 2) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); 3) telecommunications or video surveillance services provided by such entities or using such equipment; or 4) telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Respondent must comply with requirements for certifications. The provision at 48 C.F.R Section 52.204-26 requires that offerors review SAM prior to completing their required representations. This rule applies to all acquisitions, including acquisitions at or below the simplified acquisition threshold and to acquisitions of commercial items, including commercially available off the-shelf items.

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

With respect to products purchased by Customers for use in the National School Lunch Program and/or National School Breakfast Program, Contractor shall comply with all federal procurement laws and regulations with respect to such programs, including the Buy American provisions set forth in 7 C.F.R. Part 210.21(d), to the extent applicable. Contractor agrees to provide all certifications required by Customer regarding such programs.

In the event Contractor or Contractor’s supplier(s) are unable or unwilling to certify compliance with the Buy American Provision, or the applicability of an exception to the Buy American provision, H-GAC Customers may decide not to purchase from Contractor. Additionally, H-GAC Customers may require country of origin on all products and invoices submitted for payment by Contractor, and Contractor agrees to comply with any such requirement.

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

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

**SS. Domestic Preference**

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

**TT. Title VI Requirements**

H-GAC in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this Solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

**UU. Equal Employment Opportunity**

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

The equal opportunity clause provided under 41 CFR 60-1.4(b) is hereby incorporated by reference. Respondent agrees that such provision applies to any contract that meets the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 and agrees that it will comply with such provision.

**VV. Clean Air and Water Pollution Control Act**

Customer Purchase Orders using federal funds must contain a provision that requires the Contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to the Federal Rule above, Respondent certifies that it is in compliance with all applicable provisions of the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) and will remain in compliance during the term of the Contract.

**WW. Prevailing Wage**

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

**XX. Contract Work Hours and Safety Standards**

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

**YY. Profit as a Separate Element of Price**

For purchases using federal funds in excess of \$150,000, a Customer may be required to negotiate profit as a separate element of the price. See, 2 CFR 200.323(b). Contractor agrees to provide information and negotiate with the Customer regarding profit as a separate element of the price for the purchase. Contractor also agrees that the total price, including profit, charged by Contractor to Customer will not exceed the awarded pricing, including any applicable discount, under any awarded contract.

**ZZ. Byrd-Anti Lobbying Amendment**

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

(1) No Federal appropriated funds have been paid or will be paid by or on behalf of the Respondent, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal Grant, the making of a Federal Loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing, or attempting to influence, an officer or employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement, Respondent shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.

(3) Respondent shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certificate is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**AAA. Compliance with EPA Regulations Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts**

Respondent certifies that Respondent is in compliance with all applicable standards, orders, regulations, and/or requirements issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended (13 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15.

**BBB. Compliance with Energy Policy and Conservation Act**

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

**CCC. Procurement of Recovered Materials**

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

**DDD. Copeland “Anti-Kickback” Act**

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

**EEE. Discrimination**

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

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



***FFF. General Insurance***

**Unless otherwise stipulated in another section of this Solicitation, Contractor must have the following insurance and coverage minimums:**

**General liability** insurance with a Single Occurrence limit of at least \$1,000,000.00, and a General Aggregate limit of at least two times the Single Occurrence limit. **Product liability** insurance with a Single Occurrence limit of at least \$1,000,000.00, and a General Aggregate limit of at least two times the Single Occurrence limit for all Products except Automotive Fire Apparatus. For Automotive Fire Apparatus, see Specifications of this Solicitation. **Property Damage or Destruction** insurance is required for coverage of Customer owned equipment while in Contractor's possession, custody or control. The minimum Single Occurrence limit is \$500,000.00 and the General Aggregate limit must be at least two times the Single Occurrence limit. This insurance may be carried in several ways, e.g. under an Inland Marine policy, as part of Automobile coverage, or under a Garage Keepers policy.

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

***GGG. Drug-Free Workplace***

Respondent must provide a drug-free workplace in accordance with the Drug-Free Workplace Act, as applicable. For the purposes of this Section, “drug-free” means a worksite at which employees are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance. H-GAC may request a copy of this policy upon contract award.

***HHH. Applicability to Subcontractors***

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

***III. Warranty and Copyright***

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

***JJJ. Data Handling and Security***

It will always be the responsibility of the selected Contractor to manage data transfer and to secure all data appropriately during the project to prevent unauthorized access to all data, products and deliverables.



***KKK. Resolution of Protested Solicitations and Awards***

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

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

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

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

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

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

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

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

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## **PART V – EVALUATION, SELECTION AND AWARD**

### **Evaluation**

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

Submission will be evaluated based on competitive pricing that meets or exceeds the requested line items and the responsiveness and responsibility of the contractor in complying with the requirements of the solicitation.

Each criterion is given a weight totaling 100%, submissions are scored on a scale of 0-5 and are then ranked on the total of the weighted score.

H-GAC reserves the right to contact respondents for clarification of information submitted and to contact references to obtain information regarding past performance, reliability and integrity.

### **Selection**

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

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

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

### **Board Approval and Award**

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

### **Tie Bids**

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

**Debriefing**

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

**Presentation/Demonstration/Interview**

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

**Best and Final Offer (BAFO)**

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

**PART VI – SOLICITATION EVALUATION CRITERIA**

**Responsiveness (Pass/Fail)**

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

**Pricing (80%)**

Prices for each line item will be evaluated where pricing elements are satisfied (including a thorough and accurate Form-E, electronic copies, et cetera), Respondent will be ranked first, second, third, etc, based on product pricing levels. The Form-D Base Unit bid price will be weighted to 80% of the total score. Each rank will then be adjusted against the weighed multiplier to arrive at this pricing score. H-GAC reserves the right to utilize this pricing component to adjust for shortcomings (inadequate Form-E pricing, etc.); rank may be adjusted accordingly.

**Past Performance (10%)**

An evaluation will be conducted of Respondent’s previous sales performance as an HGACBuy Contractor. A current contractor with sales will receive max weight; no sales will receive 0%. First-time Respondents will receive the max weight. Respondent’s rank will be adjusted against the weighted index to arrive at a final score. For each line item, respondent will receive a final score, comprised of the score for their Pricing and Past Performance.

**NOTE:** For joint responses, each party will be scored as outlined above and an overall average will be taken of all Form-A’s submitted to determine the overall score for each joint submission.

<b>PERFORMANCE MEASURES (2% each)</b>
Timely and accurate response to request for information and/or request for quotes/pricing
Timely delivery of product or services (as quoted at time of order placement)
Quality of products/service
Timely and accurate submission of Contractor’s Activity Report
Timely payment of order processing charge

**Geographic Areas Served/Authorized Distributor (5%)**

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

**Service Facilities and Personnel (5%)**

Detailed information is provided and includes at least the following:

1. Sales office locations
2. Factory and Service Center Locations
3. Technical and maintenance services provided after a sale, and on what basis
4. Warranties, policies and procedures for handling problems and returns
5. Customer training provided, and on what basis?

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## **PART VII – INSTRUCTIONS TO RESPONDENTS**

### **Pre-Proposal/Response Conference**

A Pre-Bid Conference will be held virtually using Microsoft Teams. The meeting link will be posted to: <https://www.hgacbuy.org/bid-notices> under the corresponding solicitation. Please refer to page 1 for date/time.

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

### **Inquiries and Additional Information**

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

### **Letter(s) of Clarification**

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

### **Examination of Documents and Requirements**

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

### **Modification of Submission (Before Deadline)**

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

### **Non-Responders to Solicitation**

If unable to submit a response, please email [Purchasing@h-gac.com](mailto:Purchasing@h-gac.com) and advise the reason.

**PART VIII – REQUIRED FORMS TO SUBMIT WITH RESPONSE**

Download at: <a href="https://www.hgacbuy.org/bid-notices/solicitation-forms-resources" style="color: white;">https://www.hgacbuy.org/bid-notices/solicitation-forms-resources</a>	
	Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Affirmation Form (if subcontracts are to be let)
	Signed Signature Page (located on Page 2)
	Contractor Status and Contact Form
	Form D - Offered Items Pricing (if applicable)
	Form E – Published Options Pricing (if applicable)
	Planned Authorized Retailers Distributors Dealers Form (If applicable)
	Geographic Areas Served Form

	Certification Regarding Debarment, Suspension, and Ineligibility
	No Excluded Nation or Foreign Terrorist Organization Certification
	House Bill HB89 Verification Form
	(External Form) Conflict of Interest Form CIQ (if a conflict exists) (refer to link pg. 24, LL)
	(External Form) Certificate of Interested Parties – Form 1295 (refer to link pg. 24, MM)
	Certification Regarding Lobbying
	Copy of W-9

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