

# H-GAC

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

Cooperative Agreement - Loftin Equipment Co. - Public Services - 19-01560

19-01560

## SPECIAL PROVISIONS

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

### **ARTICLE 1: BIDS/PROPOSALS INCORPORATED**

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

### **ARTICLE 2: END USER AGREEMENTS ("EUA")**

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

### **ARTICLE 3: MOST FAVORED CUSTOMER CLAUSE**

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

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

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

#### **ARTICLE 4: PARTY LIABILITY**

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

#### **ARTICLE 5: GOVERNING LAW & VENUE**

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

#### **ARTICLE 6: SALES AND ORDER PROCESSING CHARGE**

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

#### **ARTICLE 7: LIQUIDATED DAMAGES**

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

#### **ARTICLE 8: INSURANCE**

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

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

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

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

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

- b. Insurance coverage shall be in effect for the length of any contract made pursuant to the Bid/Proposal, and for any extensions thereof, plus the number of days/months required to *deliver* any outstanding order after the close of the contract period.
- c. Original Insurance Certificates must be furnished to **H-GAC** on request, showing **Contractor** as the insured and showing coverage and limits for the insurances listed above.
- d. If any Product(s) or Service(s) will be provided by parties other than **Contractor**, all such parties are required to carry the minimum insurance coverages specified herein, and if requested by **H-GAC**, a separate insurance certificate must be submitted for each such party.
- e. **H-GAC** reserves the right to contact insurance underwriters to confirm policy and certificate issuance and document accuracy.

## **ARTICLE 9: PERFORMANCE AND PAYMENT BONDS FOR INDIVIDUAL ORDERS**

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

## **ARTICLE 10: CHANGE OF STATUS**

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

## **ARTICLE 11: TEXAS MOTOR VEHICLE BOARD LICENSING**

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

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

# H-GAC

Houston-Galveston Area Council

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

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Cooperative Agreement - Loftin Equipment Co. - Public Services - 19-01560 - 19-01560

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## GENERAL PROVISIONS

This Agreement is made and entered into, by and between the Houston-Galveston Area Council hereinafter referred to as H-GAC having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027 and Loftin Equipment Co., hereinafter referred to as the Contractor, having its principal place of business at 2111 East Highland Avenue, Suite 255, Phoenix, AZ 85016.

WITNESSETH:

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

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

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

### **ARTICLE 1: LEGAL AUTHORITY**

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

### **ARTICLE 2: APPLICABLE LAWS**

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

### **ARTICLE 3: INDEPENDENT CONTRACTOR**

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

### **ARTICLE 4: WHOLE AGREEMENT**

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

### **ARTICLE 5: SCOPE OF SERVICES**

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

#### **ARTICLE 6: PERFORMANCE PERIOD**

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

#### **ARTICLE 7: PAYMENT OR FUNDING**

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

#### **ARTICLE 8: REPORTING REQUIREMENTS**

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

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

#### **ARTICLE 9: INSURANCE**

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

#### **ARTICLE 10: SUBCONTRACTS and ASSIGNMENTS**

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

#### **ARTICLE 11: AUDIT**

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

#### **ARTICLE 12: EXAMINATION OF RECORDS**

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

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

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

#### **ARTICLE 13: RETENTION OF RECORDS**

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

#### **ARTICLE 14: CHANGES AND AMENDMENTS**

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

#### **ARTICLE 15: TERMINATION PROCEDURES**

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

##### ***A. Convenience***

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

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

##### ***B. Default***

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

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

#### **ARTICLE 16: SEVERABILITY**

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

#### **ARTICLE 17: FORCE MAJEURE**

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

#### **ARTICLE 18: CONFLICT OF INTEREST**

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

#### **ARTICLE 19: FEDERAL COMPLIANCE**

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



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

#### **ARTICLE 20: CRIMINAL PROVISIONS AND SANCTIONS**

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

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

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

#### **ARTICLE 21: INDEMNIFICATION AND RECOVERY**

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

#### **ARTICLE 22: LIMITATION OF CONTRACTOR'S LIABILITY**

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

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

**ARTICLE 23: TITLES NOT RESTRICTIVE**

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

**ARTICLE 24: JOINT WORK PRODUCT**

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

**ARTICLE 25: DISPUTES**

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

**ARTICLE 26: CHOICE OF LAW: VENUE**

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

**ARTICLE 27: ORDER OF PRIORITY**

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

**SIGNATURES:**

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

**Loftin Equipment Co.**

Signature

*Tom Kelly*

5ED0677F1B2A405...

Name

Tom Kelly

Title

Vice President of Sales

Date

12/30/2019

**H-GAC**

DocuSigned by:

Signature

*Chuck Wemple*

82EC270D5D61423...

Name

Chuck Wemple

Title

Executive Director

Date

12/23/2019

**Attachment A**  
**Loftin Equipment Co**  
**Auxiliary Power & Backup Generators**  
**Contract No.: GE02-20**

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

<b>Product Code</b>	<b>Brand</b>	<b>Description</b>	<b>Pricing</b>
GE02-20AE01	Kohler	15REOZK: Diesel; Output, standby/prime: 17 kW/15 kW; 60 Hz; Engine: Kohler 1.9L, 28 Hp	\$15,311
GE02-20AE02	Kohler	20REOZK: Diesel; Output, standby/prime: 24 kW/21 kW; 60 Hz; Engine: Kohler 2.5L, 39 Hp	\$16,600
GE02-20AE03	Kohler	30REOZK: Diesel; Output, standby/prime: 31 kW/28 kW; 60 Hz; Engine: Kohler 2.5L, 48 Hp	\$19,677
GE02-20AE04	Kohler	30REOZK4: Diesel Tier 4F; Output, standby/prime: 30 kW/28 kW, 60 Hz; Engine Kohler 1.9L, 49 HP	\$25,589
GE02-20AE05	Kohler	40REOZK: Diesel; Output, standby/prime: 42 kW/37 kW, 60 Hz; Engine Kohler 3.4L, 67 HP	\$22,765
GE02-20AE06	Kohler	40REOZK4: Diesel Tier 4F; Output, standby/prime: 40 kW/36 kW, 60 Hz; Engine Kohler 2.5L, 63 HP	\$29,606
GE02-20AE07	Kohler	48REOZK4: Diesel Tier 4F; Output, standby/prime: 48 kW/42 kW, 60 Hz; Engine Kohler 3.4L, 74.3 HP	\$35,201
GE02-20AE08	Kohler	50REOZK: Diesel; Output, standby/prime: 52 kW/47 kW, 60 Hz; Engine Kohler 3.4L, 86 HP	\$25,887
GE02-20AE09	Kohler	60REOZK: Diesel; Output, standby/prime: 60 kW/54 kW, 60 Hz; Engine Kohler 3.4L, 94 HP	\$26,755
GE02-20AE10	Kohler	80REOZJF: Diesel; Output, standby/prime: 83 kW/76 kW; 60 Hz; Engine: Deere 4.5L, 133 Hp	\$28,947
GE02-20AE11	Kohler	80REOZJ4: Diesel Tier 4F; Output, standby/prime: 85 kW/76 kW; 60 Hz; Engine: Deere 4.5L, 133 Hp	\$54,605
GE02-20AE12	Kohler	100REOZJF: Diesel; Output, standby/prime: 102 kW/92 kW; 60 Hz; Engine: Deere 4.5L, 158 Hp	\$30,111
GE02-20AE13	Kohler	100REOZJ4: Diesel Tier 4F; Output, standby/prime: 105 kW/96 kW; 60 Hz; Engine: Deere 4.5L, 166 Hp	\$62,750
GE02-20AE14	Kohler	125REOZJG: Diesel; Output, standby/prime: 128 kW/116 kW; 60 Hz; Engine: Deere 4.5L, 197 Hp	\$38,788
GE02-20AE15	Kohler	125REOZJ4: Diesel Tier 4F; Output, standby/prime: 130 kW/117 kW; 60 Hz; Engine: Deere 6.8L, 201 Hp	\$77,650
GE02-20AE16	Kohler	150REOZJF: Diesel; Output, standby/prime: 154 kW/140 kW; 60 Hz; Engine: Deere 6.8L, 237 Hp	\$41,464

GE02-20AE17	Kohler	150REOZJ4: Diesel Tier 4F; Output, standby/prime: 150 kW/139 kW; 60 Hz; Engine: Deere 6.8L, 241 Hp	\$83,862
GE02-20AE18	Kohler	180REOZJG: Diesel; Output, standby/prime: 180 kW/165 kW; 60 Hz; Engine: Deere 6.8L, 284 Hp	\$47,480
GE02-20AE19	Kohler	200REOZJF: Diesel; Output, standby/prime: 200 kW/180 kW; 60 Hz; Engine: Deere 6.8L, 315 Hp	\$51,743
GE02-20AE20	Kohler	230REOZJE: Diesel; Output, standby/prime: 230 kW/205 kW; 60 Hz; Engine: Deere 9.0L, 346 Hp	\$58,470
GE02-20AE21	Kohler	250REOZJE: Diesel; Output, standby/prime: 255 kW/230 kW; 60 Hz; Engine: Deere 9.0L, 385 Hp	\$60,033
GE02-20AE22	Kohler	275REOZJE: Diesel; Output, standby/prime: 280 kW/255 kW; 60 Hz; Engine: Deere 9.0L, 422 Hp	\$60,680
GE02-20AE23	Kohler	300REOZJ: Diesel; Output, standby: 300 kW; 60Hz; Engine Deere 9.0L, 463 Hp	\$64,391
GE02-20AE24	Kohler	350REOZJ: Diesel; Output, standby/prime: 350 kW/320 kW; 60Hz; Engine Deere 13.5L, 538 Hp	\$87,202
GE02-20AE25	Kohler	350REOZJB: Diesel: Output, standby: 360 kW, 60Hz, Engine Deere 13.5L, 538 Hp	\$84,220
GE02-20AE26	Kohler	400REOZJ: Diesel; Output, standby/prime: 400 kW/365 kW, 60Hz, Engine: Deere 13.5L, 617 Hp	\$95,000
GE02-20AE27	Kohler	400REOZJB: Diesel; Output, standby: 410 kW, 60Hz, Engine: Deere 13.5L, 617 Hp	\$92,887
GE02-20AE28	Kohler	500REOZJ: Diesel; Output, standby: 500 kW, 60Hz, Engine: Deere 13.5L, 755 Hp	\$98,768
GE02-20AE29	Kohler	500REOZJB: Diesel; Output, stanby 510 kW, 60Hz, Engine: Deere 13.5L, 755 HP	\$97,550
GE02-20AE30	Kohler	500REOZVC: Diesel; Output, standby/prime: 515 kW/460 kW; 60 Hz; Engine: Volvo 16.1L, 757 Hp	\$98,998
GE02-20AE31	Kohler	550REOZVB: Diesel; Output, standby/prime: 550 kW/500 kW; 60 Hz; Engine: Volvo 16.1L, 810 Hp	\$106,380
GE02-20AE32	Kohler	600REOZVB: Diesel; Output, standby/prime: 600 kW/555 kW; 60 Hz; Engine: Volvo 16.12 L, 903 Hp	\$119,236
GE02-20AE33	Kohler	750REOZMD: Diesel; Output, standby/prime: 760 kW/690 kW; 60 Hz; Engine: Mitsubishi 33.9L, 1207 Hp	\$198,655
GE02-20AE34	Kohler	800REOZMD: Diesel; Output, standby/prime: 810 kW/730 kW; 60 Hz; Engine: Mitsubishi 33.9L, 1207 Hp	\$202,111
GE02-20AE35	Kohler	KD800: Diesel; Output, standby/prime: 800 kW/720 kW; 60 Hz; Engine: Kohler 27 L, 1195 Hp	\$221,000
GE02-20AE36	Kohler	900REOZMD: Diesel; Outupt, standby/prime 920 kW/860 kW; 60 Hz; Engine: Mitsubishi 37.1 L, 1528 HP	\$230,758

GE02-20AE37	Kohler	KD900: Diesel; Output, standby/prime: 900 kW/810 kW; 60 Hz; Engine: Kohler 27 L, 1367 Hp	\$233,177
GE02-20AE38	Kohler	1000REOZMD: Diesel; Outupt, standby/prime 1020 kW/925 kW; 60 Hz; Engine: Mitsubishi 37.1 L, 1528 HP	\$240,562
GE02-20AE39	Kohler	KD1000: Diesel; Output, standby/prime: 1000 kW/900 kW; 60 Hz; Engine: Kohler 27 L, 1494 Hp	\$244,000
GE02-20AE40	Kohler	1250REOZMD: Diesel; Output, standby/prime: 1280 kW/1160 kW; 60 Hz; Engine: Mitsubishi 49L, 1881 Hp	\$349,763
GE02-20AE41	Kohler	KD1250: Diesel; Output, standby/prime: 1250 kW/1120 kW; 60 Hz; Engine: Kohler 36 L, 1865 Hp	\$375,893
GE02-20AE42	Kohler	KD1350: Diesel; Output, standby/prime: 1350 kW/1210 kW; 60 Hz; Engine: Kohler 36 L, 1945 Hp	\$392,317
GE02-20AE43	Kohler	KD1500: Diesel; Output, standby/prime: 1500 kW/1350 kW; 60 Hz; Engine: Kohler 45 L, 2218 Hp	\$417,990
GE02-20AE44	Kohler	1600REOZMD: Diesel; Output, standby/prime: 1600 kW/1450 kW; 60 Hz; Engine: Mitsubishi 65.4L, 2346 Hp	\$433,333
GE02-20AE45	Kohler	KD1600: Diesel; Output, standby/prime: 1600 kW/1440 kW; 60 Hz; Engine: Kohler 45 L, 2353 Hp	\$437,128
GE02-20AE46	Kohler	1750REOZMD: Diesel; Output, standby/prime: 1780 kW/1650 kW; 60 Hz; Engine: Mitsubishi 65.4L, 2923 Hp	\$486,200
GE02-20AE47	Kohler	KD1750: Diesel; Output, standby/prime: 1750 kW/1580 kW; 60 Hz; Engine: Kohler 45 L, 2561 Hp	\$488,963
GE02-20AE48	Kohler	2000REOZMD: Diesel; Output, standby/prime: 2000 kW/1820 kW; 60 Hz; Engine: Mitsubishi 65.4L, 2923 Hp	\$489,689
GE02-20AE49	Kohler	KD2000: Diesel; Output, standby/prime: 2000 kW/1810 kW; 60 Hz; Engine: Kohler 62 L, 2923 Hp	\$560,165
GE02-20AE50	Kohler	KD2250: Diesel; Output, standby/prime: 2250 kW/2040 kW; 60 Hz; Engine: Kohler 62 L, 3352 Hp	\$710,000
GE02-20AE51	Kohler	KD2500: Diesel; Output, standby/prime: 2500 kW/2270 kW; 60 Hz; Engine: Kohler 62 L, 3621 Hp	\$720,468
GE02-20AE52	Kohler	KD2800: Diesel; Output, standby/prime: 2800 kW/2540 kW; 60 Hz; Engine: Kohler 83 L, 4036 Hp	\$999,850

GE02-20AE53	Kohler	KD3000: Diesel; Output, standby/prime: 3000 kW/2720 kW; 60 Hz; Engine: Kohler 83 L, 4332 Hp	\$1,122,500
GE02-20AE54	Kohler	KD3250: Diesel; Output, standby/prime: 3250 kW/2950 kW; 60 Hz; Engine: Kohler 83 L, 4680 Hp	\$1,221,335
GE02-20AE55	Kohler	25CCL: Natural gas; Output, standby: 25 kW; 60 Hz; Engine: Kohler 2.2L, 63.9 Hp	\$15,244
GE02-20AE56	Kohler	30CCL: Natural gas; Output, standby: 30 kW; 60 Hz; Engine: Kohler 2.2L, 63.9 Hp	\$15,741
GE02-20AE57	Kohler	36CCL: Natural gas; Output, standby: 36 kW; 60 Hz; Engine: Kohler 2.2L, 63.9 Hp	\$17,800
GE02-20AE58	Kohler	KG40: Natural gas; Output, standby: 40 kW; 60 Hz; Engine: Kohler 6.2L, 103 Hp	\$20,125
GE02-20AE59	Kohler	KG45: Natural gas; Output, standby: 45 kW; 60 Hz; Engine: Kohler 6.2L, 103 Hp	\$20,566
GE02-20AE60	Kohler	KG50: Natural gas; Output, standby: 53 kW; 60 Hz; Engine: Kohler 6.2L, 103 Hp	\$20,980
GE02-20AE61	Kohler	KG60: Natural gas; Output, standby: 60 kW; 60 Hz; Engine: Kohler 6.2L, 103 Hp	\$21,544
GE02-20AE63	Kohler	KG80: Natural gas; Output, standby: 80 kW; 60 Hz; Engine: Kohler 6.2L, 126 Hp	\$28,890
GE02-20AE64	Kohler	100REZGD: Natural gas; Output, standby/prime: 100 kW/94 kW; 60 Hz; Engine: GM 5.7L, 162 Hp	\$32,800
GE02-20AE65	Kohler	125REZGC: Natural gas; Output, standby/prime: 130 kW/115 kW; 60 Hz; Engine: PSI 8.8L, 190 Hp	\$37,315
GE02-20AE66	Kohler	150REZGC: Natural gas; Output, standby: 150 kW; 60 Hz; Engine: PSI 8.8L, 259 Hp	\$45,277
GE02-20AE67	Kohler	180REZXB: Natural gas; Output, standby/prime: 190 kW/170 kW; 60 Hz; Engine: Doosan 11.1L, 302 Hp	\$82,900
GE02-20AE68	Kohler	200REZXB: Natural gas; Output, standby/prime: 200 kW/176 kW; 60 Hz; Engine: Doosan 11.1L, 302 Hp	\$84,880
GE02-20AE69	Kohler	250REZXB: Natural gas; Output, standby/prime: 260 kW/235 kW; 60 Hz; Engine: Doosan 14.6L, 402 Hp	\$120,496
GE02-20AE70	Kohler	300REZXB: Natural gas; Output, standby/prime: 300 kW/270 kW; 60 Hz; Engine: Doosan 18.3L, 530 Hp	\$147,084
GE02-20AE71	Kohler	300REZXC: Natural gas; Output, standby: 300 kW; 60 Hz; Engine: Doosan 14.6L, 459 Hp	\$129,886
GE02-20AE72	Kohler	350REZXB: Natural gas; Output, standby/prime: 355 kW/300 kW; 60 Hz; Engine: Doosan 18.3L, 530 Hp	\$158,144

GE02-20AE73	Kohler	400REZXB: Natural gas; Output, standby/prime: 400 kW/360 kW; 60 Hz; Engine: Doosan 21.9L, 605 Hp	\$181,366
GE02-20AE74	Kohler	450REZXB: Natural gas; Output, standby: 450 kW; 60 Hz; Engine: Doosan 21.9L, 684 Hp	\$195,130
GE02-20AE75	Kohler	500REZK: Natural gas; Output, standby/prime: 500 kW/435 kW; 60 Hz; Engine: Siemens 24L, 711 Hp	\$341,003
GE02-20AE76	Kohler	750REZK: Natural gas; Output, standby/prime: 750 kW/630 kW; 60 Hz; Engine: Siemens 36L, 1059 Hp	\$452,369
GE02-20AE77	Kohler	1000REZK: Natural gas; Output, standby/prime: 1000 kW/880 kW; 60 Hz; Engine: Siemens 48L, 1421 Hp	\$554,522
GE02-20AE78	Kohler	20RESC (Residential/Light Commercial Series); multi fuel, LPG / Natural Gas; Output, standby 20 kW/18 kW; 60 HZ (2F7 alternator); Engine: Kohler CH1000	\$4,899
GE02-20AE79	Kohler	24RCL (Residential/Light Commercial Series); multi fuel, LPG / Natural Gas; Output, standby 21 kW; 60 HZ (4E5.0 alternator); Engine: Kohler KG2204	\$11,722
GE02-20AE80	Kohler	30RCL (Residential/Light Commercial Series); multi fuel, LPG / Natural Gas; Output, standby 30 kW; 60 HZ (4D8.3 alternator); Engine: Kohler KG2204T	\$12,797
GE02-20AE81	Kohler	38RCLB (Residential/Light Commercial Series); multi fuel, LPG / Natural Gas; Output, standby 38 kW; 60 HZ (4D8.3 alternator); Engine: Kohler KG2204T	\$15,108
GE02-20AE82	Kohler	48RCLB (Residential/Light Commercial Series); multi fuel, LPG / Natural Gas; Output, standby 48 kW; 60 HZ (4Q7BX alternator); Engine: Kohler KG6208	\$17,877
GE02-20AE83	Kohler	60RCLA (Residential/Light Commercial Series); multi fuel, LPG / Natural Gas; Output, standby 60 kW; 60 HZ (4P10X alternator); Engine: Kohler KG6208	\$20,798
GE02-20AE84	Kohler	6VSG: DC (battery charging applications): multi fuel, LPG / Natural Gas; Output, 27 VDC @ 222 amps (6 kW); Engine: Kohler CH740	\$6,722
GE02-20AF01	Kubota	GL7000 (low profile series): Diesel; Output, max/rated: 7 kW/6.5 kW; 60 Hz; Engine: Kubota 0.047L / 47 cc, 10 Hp	\$5,975
GE02-20AF02	Kubota	GL7000-TM (low profile series): Diesel; Output, max/rated: 7 kW/6.5 kW; 60 Hz; Engine: Kubota 0.047L / 47 cc, 10 Hp; inclusive of terminal lugs for hardwiring outputs	\$6,375



GE02-20AF03	Kubota	GL11000 (low profile series): Diesel; Output, max/rated: 11 kW/10 kW; 60 Hz; Engine: Kubota 0.71L / 71 cc, 16 Hp	\$7,655
GE02-20AF04	Kubota	GL11000-TM (low profile series): Diesel; Output, max/rated: 11 kW/10 kW; 60 Hz; Engine: Kubota 0.71L / 71 cc, 16 Hp; inclusive of terminal lugs for hardwiring outputs	\$7,955
GE02-20AF05	Kubota	GL14000 (low profile series): Diesel; Output, max/rated: 14 kW/12 kW; 60 Hz; Engine: Kubota D902	\$10,500
GE02-20DF02	Kohler	50REZGT: LP Gas; Output, standby/prime 42 kW / 40 kW; 60 Hz; Engine: GM 4.3 L, 64.2 HP	\$39,266
GE02-20DF03	Kohler	70REZGT: LP Gas; Output, standby/prime 62 kW / 56 kW; 60 Hz; Engine: GM 5.7 L, 93.8 HP	\$42,425
GE02-20DF04	Kohler	125REZGT: LP Gas; Output, standby/prime 105 kW / 100 kW; 60 Hz; Engine: PSI 8.8 L, 170 HP	\$71,329
GE02-20DF05	Kohler	35REOZT4: Diesel; Output, standby / prime: 30 kW / 28 kW; 60 Hz; Engine: Kohler 1.9 L, 49 Hp	\$31,216
GE02-20DF06	Kohler	55REOZT4: Diesel; Output, standby / prime: 48 kW / 43 kW; 60 Hz; Engine: Kohler 3.4 L, 74 Hp	\$40,241
GE02-20DF07	Kohler	45REOZT4: Diesel; Output, standby / prime: 40 kW / 36 kW; 60 Hz; Engine: Kohler 2.5 L, 63 Hp	\$35,252
GE02-20DF08	Kohler	90REOZT4: Diesel; Output, standby / prime: 85 kW / 76 kW; 60 Hz; Engine: Deere 4.5 L, 133 Hp	\$60,402
GE02-20DF09	Kohler	120REOZT4: Diesel; Output, standby / prime: 105 kW / 96 kW; 60 Hz; Engine: Deere 4.5 L, 166 Hp	\$69,045
GE02-20DF10	Kohler	145REOZT4: Diesel; Output, standby / prime: 130 KW / 117 KW; 60 Hz; Engine: Deere 6.8L, 201 Hp	\$84,266
GE02-20DF11	Kohler	175REOZT4: Diesel; Outpu, standby / prime: 154 KW / 139 KW; 60 Hz; Engine: Deere 6.8L, 241 Hp	\$90,248