

**AGREEMENT TO PIGGYBACK A CONTRACT FOR SEWER/STORM WATER,
HYDRO-EXCAVATING EQUIPMENT AND RELATED SERVICES**

THIS AGREEMENT is made and entered into on _____, by the City of Pompano Beach (“City”) and Cues, Inc., a foreign corporation authorized to do business in Florida, whose principal place of business is 3600 Rio Vista Avenue, Orlando, FL 32805 (“Contractor”).

WHEREAS, Houston-Galveston Area Council received bids or proposals in response to competitive solicitation SC06-24 to purchase Sewer/Storm Water, Hydro-Excavating Equipment and Related Services; and

WHEREAS, on June 1, 2024, the Houston-Galveston Area Council approved the award of SC06-24 - Sewer/Storm Water, Hydro-Excavating Equipment and Related Services, and an agreement was executed for a term of four (4) years effective June 1, 2024, through May 31, 2028; and,

WHEREAS, the City’s Utilities Department wishes to enter into an Agreement with Cues, Inc.; and

WHEREAS, Section 32.41(C) of the City Code provides authority for the City Manager to piggyback the purchase of goods and services with state or local public contracts within certain codified guidelines, of which these guidelines have been met; and

WHEREAS, the parties wish to incorporate the terms and conditions of the solicitation and contractual arrangement with the same terms and conditions set forth in the agreement of SC06-24 - Sewer/Storm Water, Hydro-Excavating Equipment and Related Services between Houston-Galveston Area Council and Cues, Inc. which is attached and incorporated in this Agreement as Exhibit “A” and adopted in its entirety by the City and the Contractor, together with and including contract renewals, amendments and change orders to the extent applicable; and

WHEREAS, the City has determined that piggybacking the agreement of SC06-24 - Sewer/Storm Water, Hydro-Excavating Equipment and Related Services between Houston-Galveston Area Council and Cues, Inc. is necessary for the purchase of Sewer/Storm Water, Hydro-Excavating Equipment and Related Services and is the most economically advantageous way to procure these necessary materials, products, and services in a timely and efficient manner.

NOW THEREFORE, in consideration of the mutual covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. RECITATIONS.

The foregoing “WHEREAS” clauses are adopted and incorporated in this Agreement.

2. TERM.

The term of this Piggyback Agreement shall commence on the execution date and expire on May 31, 2028, unless it is terminated sooner pursuant to Section 4(F) of this agreement.

3. RENEWAL.

The Contractor affirms and ratifies the terms and conditions of the Agreement with Houston-Galveston Area Council and agrees to perform the services in that Contract for the City in accordance with the terms for the agreed time period and any available renewal period.

4. AS-NEEDED BASIS.

The Contractor agrees to provide the services to the City of Pompano Beach on an as-needed basis, as requested by the City.

- A. City shall pay the Contractor no more than the unit prices set forth in the Agreement and in accordance with the provisions of the Agreement.
- B. If permits are required as part of the services being rendered, the Contractor shall submit complete and accurate permit applications to all applicable permitting agencies within five (5) business days of receiving all documents from the City necessary to file such permit applications. The City’s Utilities Department shall pay all permit and related fees directly to the permitting agencies, including any permit fees charged by the City.
- C. The City of Pompano Beach shall be deemed substituted for Houston-Galveston Area Council with regard to any and all provisions of the Contract, including, for example, and without limitation, with regard to bond requirements, insurance, indemnification, licensing, termination, default, and ownership of documents, including the additional provisions in sections D, E, and F, below. All recitals, representations, and warranties of the Contractor made in the Contract are restated as if fully set forth herein, made for the benefit of the City, and incorporated herein.
- D. Contractor shall maintain insurance in accordance with insurance requirements in Exhibit “A” throughout the term of this Agreement. The Contractor shall furnish the City with a certificate of insurance in a form acceptable to the City and will be incorporated into this agreement as Exhibit “B.” Such certificate provided by Contractor must state the City will be given thirty (30) days written notice prior to cancellation or material change in coverage. A copy of the additional insured endorsement must be attached and contain language on a form no more restrictive than ISO form CG 20 10 (Additional Insured – Owners, Lessees, or Contractor) combined with ISO form CG 20 37 (Additional Insured – Owners Lessees or Contractors – Completed Operations). The contractor shall not commence work unless and until the Contractor has fully met the requirements for insurance and appropriate evidence, in the City’s sole discretion, has been provided to and approved by the City.

- E. Contractor shall indemnify and hold harmless the City, its elected officials, officers, employees, and agents, from and against all claims, suits, actions, damages, causes, or actions or judgments arising out of the terms of this Agreement for any personal injury, loss of life, or damage to property sustained as a result of the performance or non-performance of services, from and against any orders, judgments, or decrees, which may be entered against City, its elected officials, officers, employees, and agents and from and against all costs, attorney's fees, expenses, and other liabilities incurred in the defense of any such claim, suit, or action, and the investigation thereof. Nothing in the award, resulting agreement, contract, or purchase order shall be deemed to affect the rights, privileges, and immunities of the City as set forth in Florida Statute section 768.28. The parties agree that one percent (1%) of the total compensation paid to the Contractor for work under this Agreement shall constitute specific consideration to the Contractor for the indemnification to be provided under the contract.
- F. Both parties agree that the City may terminate this Agreement for any reason with ten (10) business days' written notice to the Contractor.

5. NOTICE.

Notice shall be provided in writing by certified mail return receipt requested, electronic mail, or customarily used overnight transmission with proof of delivery to the following parties, with mandatory copies, as provided below:

For City: Gregory P. Harrison
City Manager
City of Pompano Beach
100 W. Atlantic Blvd., 4th Floor
Pompano Beach, Florida 33060

Steve Almyda
Wastewater Collection Manager
City of Pompano Beach
100 W. Atlantic Blvd.
Pompano Beach, Florida 33060

For Contractor: Jonathan Russell
VP, General Manager, Director
3600 Rio Vista Avenue
Orlando, FL, 32805

6. GOVERNING LAW; VENUE; WAIVER OF TRIAL BY JURY.

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any litigation arising from, related to, or in connection with this Agreement shall be in the Seventeenth Judicial Circuit in and for Broward County, Florida, or in the United States District Court for the Southern District of Florida, or

United States Bankruptcy Court for the Southern District of Florida, as applicable. BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

7. PUBLIC RECORDS.

- A. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law, as amended. Specifically, the Contractor shall:
1. Keep and maintain public records required by the City in order to perform the service.
 2. Upon request from the City's custodian of public records, provide the City with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City.
 4. Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the City's information technology systems.
- B. Failure of the Contractor to provide the above-described public records to the City within a reasonable time may subject the Contractor to penalties under 119.10 Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
(954) 786-4611
RecordsCustodian@copbfl.com**

8. ASSIGNMENT.

Neither party may assign its rights or obligations under this Agreement without the consent of the other.

9. NONEXCLUSIVITY.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise.

10. INDEPENDENT CONTRACTOR.

Both the City and the Contractor agree that the Contractor is an independent contractor and not a City employee. City shall not be liable for any wages, salaries, debts, liabilities, or other obligations for Contractor's employees, agents, or other representatives performing obligations of Contractor. Except as otherwise provided, neither party is the agent of the other nor is authorized to act on behalf of the other in any matter.

11. COMPLIANCE WITH ALL LAWS.

In the conduct of its activities under this Agreement, the Contractor shall comply with all directly applicable federal and state laws and regulations and all directly applicable county and city ordinances and regulations, including, but not limited to, compliance with the Americans with Disabilities Act. Ignorance on the Contractor's part shall in no way relieve the Contractor from this responsibility. At its sole expense, the Contractor shall purchase all necessary licenses and permits required by the State of Florida, Broward County, and the City.

12. ENTIRE AGREEMENT.

This Agreement sets forth the entire agreement between Contractor and City with respect to the subject matter of this Agreement. This Agreement supersedes all prior and contemporaneous negotiations, understandings, and agreements, written or oral, between the parties. This

Agreement may not be modified except by the parties' mutual agreement set forth in writing and signed by the parties.

13. COUNTERPARTS.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14. INDEMNIFICATION.

Contractor shall at all times indemnify, defend, save and hold harmless, City in the same manner as to the same extent, terms and conditions as set forth in Article 37 of the Houston-Galveston Master Agreement.

15. SCRUTINIZED COMPANIES.

By execution of this Agreement, in accordance with the requirements of F.S. 287.135 and F.S. 215.473, the Contractor certifies that the Contractor is not participating in a boycott of Israel. The Contractor further certifies that the Contractor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in Iran Terrorism Sectors List, nor has Contractor been engaged in business operations in Syria. Subject to limited exceptions provided in state law, the City will not contract for the provision of goods or services with any scrutinized company referred to above. In accordance with Section 287.135, Florida Statutes as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local government entity for goods or services of:

- A. Any amount if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or
- B. One million dollars (\$1,000,000.00) or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:
 - i. Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, created pursuant to Section 215.473, Florida Statutes; or
 - ii. Is engaged in business operations in Syria.

Submitting a false certification or being placed on a list created pursuant to Section 215.473, Florida Statutes relating to scrutinized active business operations in Iran after the Contractor has submitted a certification shall be deemed a material breach of contract. The City shall provide notice, in writing, to the Contractor of the City's determination concerning the false certification. The Contractor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, the Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Contractor does not

demonstrate that the City's determination of false certification was made in error, then the City shall have the right to terminate the contract and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time.

16. AFFIDAVIT OF COMPLIANCE WITH ANTI-HUMAN TRAFFICKING LAWS.

In accordance with section 787.06 (13), Florida Statutes, the undersigned, on behalf of the entity listed below (“Entity”), hereby attests under penalty of perjury that:

- A. Entity does not use coercion for labor or services as defined in Section 787.06, Florida Statutes, entitled “Human Trafficking.”

17. AFFIDAVIT OF COMPLIANCE WITH FOREIGN ENTITY LAWS.

The undersigned, on behalf of the entity listed below (“Entity”), hereby attests under penalty of perjury as follows:

- A. Entity is not owned by the government of a foreign country of concern as defined in Section 287.138, Florida Statutes.
- B. The government of a foreign country of concern does not have a controlling interest in the Entity.
- C. Entity is not organized under the laws and does not have a principal place of business in a foreign country of concern.
- D. Entity is not owned or controlled by the government of a foreign country of concern, as defined in Section 692.201, Florida Statutes.
- E. Entity is not a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country of concern, as defined in Section 692.201, Florida Statutes, or a subsidiary of such entity.
- F. Entity is not a foreign principal, as defined in Section 692.201, Florida Statutes.
- G. Entity is in compliance with all applicable requirements of Sections 692.202, 692.203, and 692.204, Florida Statutes.
- H. The undersigned is authorized to execute this affidavit on behalf of Entity.

18. SEVERABILITY.

Should any provision of this Agreement or the applications of such provisions be rendered or declared invalid by court action or by reason of any existing or subsequently enacted legislation, the remaining parts of this Agreement shall remain in full force and effect.

THE REMAINDER OF THE PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first written above.

CITY OF POMPANO BEACH

By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

KERVIN ALFRED, CITY CLERK

(SEAL)

Approved as to Form:

MARK E. BERMAN, CITY ATTORNEY

“CONTRACTOR”

Witnesses:

Cues, Inc.

[Signature]
Jerry Teichma, Chief Financial Officer
~~Director~~

By: [Signature]
Jonathan Russell, VP, General Manager,

[Signature]
(Signature)

Robert Detwiler
(Print or Type Name)

(Signature)

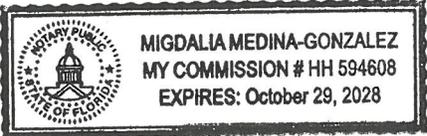
(Print or Type Name)

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this 16th day of April, 2025, by Jonathan Russell, as Cues, Inc., a Delaware Corporation, authorized to do business in the State of Florida, on behalf of the corporation, who is personally known to me or who has produced N/A as identification.

NOTARY'S SEAL:



[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

Migdalia Medina-Gonzalez
(Name of Acknowledger Typed, Printed or Stamped)

HH 594608
Commission Number

Agreement To Piggyback a Contract for Sewer/Storm Water, Hydro-Excavating Equipment and Related Services with Cues, Inc.

H-GAC

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

Cooperative Agreement - Contract - CUES, Inc. - Public Services - ID: 12571 - SC06-24

MASTER GENERAL PROVISIONS

This Master 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 CUES, Inc., hereinafter referred to as the Contractor, having its principal place of business at 3600 Rio Vista Avenue, Orlando, FL 32805.

WITNESSETH:

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

WHEREAS, the Contractor has agreed to perform such services in accordance with the specifications of the Master 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 Master Agreement. The Contractor's governing body, where applicable, has authorized the signatory official(s) to enter into this Master Agreement and bind the Contractor to the terms of this Master Agreement and any subsequent amendments hereto.

ARTICLE 2: APPLICABLE LAWS

The Contractor agrees to conduct all activities under this Master Agreement in accordance with all federal laws, executive orders, policies, procedures, applicable rules, regulations, directives, standards, ordinances, and laws, in effect or promulgated during the term of this Master 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: PUBLIC INFORMATION

Except as stated below, all materials submitted to H-GAC, including any attachments, appendices, or other information submitted as a part of a submission or Master Agreement, 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 Contractor wishes to claim portions of the response are not subject to the Texas Public Information Act, it shall so; 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 Contractor. H-GAC will request such a determination only if Contractor bears all costs for preparation of the submission. H-GAC is not responsible for the return of creative examples of work submitted. 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.

ARTICLE 4: INDEPENDENT CONTRACTOR

The execution of this Master Agreement and the rendering of services prescribed by this Master Agreement do not change the independent status of H-GAC or the Contractor. No provision of this Master Agreement or act of H-GAC in performance of the Master 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 5: ANTI-COMPETITIVE BEHAVIOR

Contractor will not collude, in any manner, or engage in any practice which may restrict or eliminate competition or otherwise restrain trade.

ARTICLE 6: 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.

ARTICLE 7: 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.
- 6.

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.

ARTICLE 8: SCOPE OF SERVICES

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

ARTICLE 9: PERFORMANCE PERIOD

This Master Agreement shall be performed during the period which begins Jun 01 2024 and ends May 31 2028. All services under this Master Agreement must be rendered within this performance period, unless directly specified under a written change or extension provisioned under Article 21, which shall be fully executed by both parties to this Master Agreement.

ARTICLE 10: PAYMENT OR FUNDING

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

ARTICLE 11: 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.

ARTICLE 12: 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 Contractor's submission prior to contract award. The applicability or acceptance of these terms is at the discretion of the Customer.

ARTICLE 13: REPORTING REQUIREMENTS

If the Contractor fails to submit to H-GAC in a timely and satisfactory manner any report required by this Master Agreement, or otherwise fails to satisfactorily render performances hereunder, H-GAC may terminate this Master Agreement with notice as identified in Article 29 of these General Provisions. H-GAC has final determination of the adequacy of performance and reporting by Contractor. Termination of this Master 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 Master Agreement. Any additional reporting requirements shall be set forth in the Special Provisions of this Master Agreement.

ARTICLE 14: INSURANCE

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

ARTICLE 15: SUBCONTRACTS AND ASSIGNMENTS

Except as may be set forth in the Special Provisions, the Contractor agrees not to assign, transfer, convey, sublet, or otherwise dispose of this Master 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 Master 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 16: 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 Master 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 17: 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.

ARTICLE 18: 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 Master 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 Master 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.

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

ARTICLE 19: RETENTION OF RECORDS

The Contractor and its subcontractors shall maintain all records pertinent to this Master 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 20: DISTRIBUTORS, VENDORS, RESELLERS

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.

ARTICLE 21: CHANGE ORDERS AND AMENDMENTS

- A. Any alterations, additions, or deletions to the terms of this Master 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 Master Agreement, both parties agree that any amendment that affects the performance under this Master 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 Master Agreement and shall be binding upon the parties as if written herein.

- C. 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.

ARTICLE 22: CONTRACT ITEM CHANGES

- A. 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.
- B. 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.
- C. 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.
- D. In the case of specifically identified catalogs or price sheets which have been contracted as base bid items or as published options, routine published changes to products and pricing will be automatically incorporated into the contract. However, Contractor must still provide written notice and an explanation of the changes to products and pricing. H-GAC will respond with written approval.

ARTICLE 23: CONTRACT PRICE ADJUSTMENTS

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.

Price Increase

Contractors may request a price increase for items priced as Base Bid items and Published Options. 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 governmental actions, or other economic factors. Manufacturer price/contract changes involving the sale of motor vehicles will be considered and may be allowed during the entire contract

period subject to submission and verification of the proper documentation required for a contract change as referenced in this section.

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 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.

Requesting Price Increase/Required Documentation

Contractor must submit a written overview of changes requested and reasons for the request, stating 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 be supported with substantive documentation (e.g., notices from suppliers and manufacturers of pricing changes in products, components, transportation, raw materials or commodities, and/or product availability, 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 Lead Program Coordinator, james.glover@h-gac.com.

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.

ARTICLE 24: DELIVERIES AND 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 as agreed to on any corresponding customer Purchase Order.

Shipping must be Freight On Board 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 Master Agreement, deliveries must consist only of new and unused merchandise.

ARTICLE 25: 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.

ARTICLE 26: 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.

ARTICLE 27: OUT OF STOCK, PRODUCT RECALLS, AND DISCONTINUED PRODUCTS

H-GAC does NOT purchase the products sold pursuant to a Solicitation or Master Agreement. 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.

ARTICLE 28: WARRANTIES, SALES, AND SERVICE

Warranties must be the manufacturer's standard and inclusive of any other warranty requirements stated in the Master Agreement; 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.

ARTICLE 29: TERMINATION PROCEDURES

The Contractor acknowledges that this Master Agreement may be terminated for Convenience or Default. H-GAC will not pay for any expenses incurred after the termination date of the contract.

A. Convenience

H-GAC may terminate this Master 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 Master 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 Master 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 Master Agreement for any reason whatsoever, or so fails to make progress or otherwise violates the Master Agreements that completion of services herein specified within the Master Agreement term is significantly endangered, and in either of these two instances 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.
- (3) 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.

ARTICLE 30: SEVERABILITY

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

ARTICLE 31: FORCE MAJEURE

To the extent that either party to this Master 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 32: CONFLICT OF INTEREST

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

- A. **Conflict of Interest Questionnaire:** 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/CIQ.pdf>. 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.
- B. **Certificate of Interested Parties Form – Form 1295:** As required by Section 2252.908 of the Texas Government Code. H-GAC will not enter a Contract with 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. Respondents who are awarded a Contract must submit their Form 1295 with the signed Contract to H-GAC.

ARTICLE 33: FEDERAL COMPLIANCE

Contractor agrees to comply with all federal statutes relating to nondiscrimination, labor standards, and environmental compliance. With regards to "Rights to Inventions Made Under a Contract or Master Agreement," If the Federal award meets the definition of "funding Master Agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding Master Agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Master Agreements," and any implementing regulations issued by the awarding agency. Contractor agrees to be wholly compliant with the provisions of 2 CFR 200, Appendix II. Additionally, for work to be performed under the Master 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 Master Agreement; (k) the requirements of any other nondiscrimination statute(s) which may apply to this Master 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 34: 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.

ARTICLE 35: DOMESTIC PREFERENCE

In accordance with 2 CFR 200.322, as appropriate and to the extent consistent with law, when using federal grant award funds H-GAC 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). H-GAC 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, then it shall work with H-GAC to provide all required certifications and other documentation needed to show compliance.

ARTICLE 36: CRIMINAL PROVISIONS AND SANCTIONS

The Contractor agrees to perform the Master 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 Master

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 Master Agreement or which would adversely affect the Contractor's ability to perform services under this Master Agreement.

ARTICLE 37: INDEMNIFICATION AND RECOVERY

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

ARTICLE 38: 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 Master 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 Master Agreement.

ARTICLE 39: TITLES NOT RESTRICTIVE

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

ARTICLE 40: JOINT WORK PRODUCT

This Master Agreement is the joint work product of H-GAC and the Contractor. This Master 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 41: PROCUREMENT OF RECOVERED MATERIAL

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.

ARTICLE 42: COPELAND “ANTI-KICKBACK” ACT

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. 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.

ARTICLE 43: 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.

ARTICLE 44: DRUG FREE WORKPLACE

Contractor 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.

ARTICLE 45: APPLICABILITY TO SUBCONTRACTORS

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

ARTICLE 46: 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.

ARTICLE 47: 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.

ARTICLE 48: DISPUTES

All disputes concerning questions of fact or of law arising under this Master Agreement, which are not addressed within the Whole Master 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 Master Agreement and in accordance with H-GAC's final decision.

ARTICLE 49: CHOICE OF LAW: VENUE

This Master 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 Master 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 50: ORDER OF PRIORITY

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

ARTICLE 51: WHOLE MASTER AGREEMENT

Please note, this is an H-GAC Master Agreement template and is used for all products and services offered in H-GAC Cooperative Purchasing. Any redlines to this Master Agreement may not be reviewed. If this Master Agreement has not been signed by the Contractor within 30 calendar days, this Master Agreement will be automatically voided. The Master General Provisions, Master Special Provisions, and Attachments, as provided herein, constitute the complete Master Agreement between the parties hereto, and supersede any and all oral and written Master Agreements between the parties relating to matters herein. Except as otherwise provided herein, this Master Agreement cannot be modified without written consent of the parties.

ARTICLE 52: UNIVERSAL IDENTIFIER AND SYSTEM FOR AWARD MANAGEMENT (SAM)

In accordance with 2 CFR Title 2, Subtitle A, Chapter I, Part 25 as it applies to a Federal awarding agency's grants, cooperative agreements, loans, and other types of Federal financial assistance as defined in 2 CFR 25.406. Contractor understands and as it relates to 2 CFR 25.205(a), a Federal awarding agency may not make a Federal award or financial modification to an existing Federal award to an applicant or recipient until the entity has complied with the requirements described in 2 CFR 25.200 to provide a valid unique entity identifier and maintain an active SAM registration (www.SAM.gov) with current information (other than any requirement that is not applicable because the entity is exempted under § 25.110). 2 CFR 25.200(b) requires that registration in the SAM **prior to submitting an application or plan**; and maintain an active SAM registration with current information, including information on a recipient's immediate and highest level owner and subsidiaries, as well as on all predecessors that have been awarded a Federal contract or grant within the last three years, if applicable, at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency; and provide its unique entity identifier in each application or plan it submits to the Federal awarding agency. To remain registered in the SAM database after the initial registration, the applicant is required to review and update its information in the SAM database on an annual basis from the date of initial registration or subsequent updates to ensure it is current, accurate and complete. At the time a Federal awarding agency is ready to make a Federal award, if the intended recipient has not complied with an applicable requirement to provide a unique entity identifier or maintain an active SAM registration with current information, the Federal awarding agency: (1) May determine that the applicant is not qualified to receive a Federal award; and (2) May use that determination as a basis for making a Federal award to another applicant.

ARTICLE 53: PROCUREMENT OF RECOVERED MATERIALS

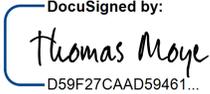
In accordance with 2 CFR 200.323, the Houston-Galveston Area Council and the Contractor or Subrecipient must

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)), the Contractor or Subrecipient certifies that the percentage of recovered materials content for EPA-designated items to be delivered or used in the performance of the Agreement will be at least the amount required by the applicable contract specifications or other contractual requirements.

SIGNATURES:

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

CUES, Inc.

Signature  D59F27CAAD59461...

Name Thomas Moye
Title Chief Financial Officer
Date 5/23/2024

Signature  82EC270D5D61423...

Name Chuck Wemple
Title Executive Director
Date 5/23/2024

H-GAC

H-GAC

Houston-Galveston Area Council

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

Cooperative Agreement - Contract - CUES, Inc. - Public Services - ID: 12571

MASTER SPECIAL PROVISIONS

Please note, this is an H-GAC Master Agreement template and is used for all products and services offered in H-GAC Cooperative Purchasing. Any redlines to this Master Agreement may not be reviewed. Incorporated by attachment, as part of the whole Master Agreement, H-GAC and the Contractor do, hereby agree to the Master Special Provisions as follows:

ARTICLE 1: BIDS/PROPOSALS INCORPORATED

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

ARTICLE 2: END USER MASTER AGREEMENTS ("EUA")

H-GAC acknowledges that the END USER, which is the HGACBuy customer utilizing the contract (CUSTOMER and END USER may be used interchangeably) may choose to enter into an End User Master Agreement (EUA) with the Contractor through this Master Agreement. A CUSTOMER/END USER is a state agency, county, municipality, special district, or other political subdivision of a state, or a qualifying non-profit corporation (providing one or more governmental function or service that possess legal authority to enter into the Contract. The term of the EUA may exceed the term of the current H-GAC Master Agreement.

H-GAC's acknowledgement is not an endorsement or approval of the End User Master Agreement's terms and conditions. Contractor agrees not to offer, agree to or accept from the CUSTOMER/END USER, any terms or conditions that conflict with those in Contractor's Master Agreement with H-GAC. Contractor affirms that termination of its Master 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 Master Agreement, termination of this Master Agreement will disallow the Contractor from entering into any new EUA with CUSTOMER/END USER. Applicable H-GAC order processing charges will be due and payable to H-GAC on any EUAs, surviving termination of this Master 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 Master Agreement, Contractor develops a regularly followed standard procedure of entering into Master 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 Master Agreement shall be deemed to be automatically retroactively amended, to the effective date of Contractor's most favorable past Master Agreement with another entity. Contractor shall provide the same prices, warranties, benefits, or terms to H-GAC and its CUSTOMER/END USER as provided in its most favorable past Master 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 Master 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 Master Agreement between H-GAC and Contractor shall be automatically amended, effective retroactively, to the effective date of the most favored Master Agreement, to provide the same prices, warranties, benefits, or terms to H-GAC and the CUSTOMER/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 Master 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 CUSTOMER/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 Master Agreement.

ARTICLE 5: GOVERNING LAW & VENUE

Contractor and H-GAC agree that Contractor will make every reasonable effort to resolve disputes with the CUSTOMER/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 CUSTOMER/END USER based on the pricing and terms of this Master Agreement. H-GAC will invoice Contractor for the applicable order processing charge when H-GAC receives notification of a CUSTOMER/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 CUSTOMER/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 a CUSTOMER/END USER's payment, whichever comes first, notwithstanding Contractor's receipt of invoice. For sales made by Contractor based on this Master Agreement, including sales to entities without Interlocal Master 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 Master Agreement. H-GAC reserves the right to take appropriate actions including, but not limited to, Master 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 a CUSTOMER/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 Master 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 CUSTOMER/END USER at the time a CUSTOMER/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.
- b. 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.
- c. Property Damage or Destruction insurance is required for coverage of End User owned equipment while in Contractor's possession, custody, or control. The minimum Single Occurrence limit is \$500,000.00 and the General Aggregate limit must be at least two times the Single Occurrence limit. This insurance may be carried in several ways, e.g. under an Inland Marine policy, as art of Automobile coverage, or under a Garage Keepers policy. In any event, this coverage must be specifically and clearly listed on insurance certificate(s) submitted to H-GAC.
- d. 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.
- e. 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.
- f. 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.
- g. 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 CUSTOMER/END USER. Contractor shall quote a price to CUSTOMER/END USER for provision of any requested PPB, and agrees to furnish the PPB within ten business (10) days of receipt of CUSTOMER/END USER's purchase order.

ARTICLE 10: 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/END USER. Contractor will need to refer to the solicitation for the Order Processing Charge.

ARTICLE 11: 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 Master 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 Master Agreement.

ARTICLE 12: REQUIREMENTS TO APPLICABLE 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 the Contractor 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 Master Agreement, 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 END USER/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.

ARTICLE 13: TEXAS MOTOR VEHICLE BOARD LICENSING

All Contractors 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 Master Agreement term, any required Contractor license is denied, revoked, or not renewed, Contractor shall be in default of this Master 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.

ARTICLE 14: INSPECTION/TESTING

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

ARTICLE 15: ADDITIONAL REPORTING REQUIREMENTS

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:

- a. CUSTOMER/END USER Name
- b. Product/Service purchased, including Product Code if applicable
- c. Customer Purchase Order Number
- d. Purchase Order Date
- e. Product/Service dollar amount
- f. HGACBuy Order Processing Charge amount

ARTICLE 16: 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/END USER.

ARTICLE 17: PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL CERTIFICATION

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.

ARTICLE 18: NO EXCLUDED NATION OR TERRORIST ORGANIZATION CERTIFICATION

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.)

ARTICLE 19: 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.

Contractor must comply with requirements for certifications. The provision at 48 C.F.R Section 52.204-26 requires that Contractors 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.

ARTICLE 20: BUY AMERICA ACT (National School Lunch Program and Breakfast Program)

With respect to products purchased by CUSTOMER/END USER 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/END USER 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 CUSTOMER/END USER may decide not to purchase from Contractor. Additionally, H-GAC

CUSTOMER/END USER may require country of origin on all products and invoices submitted for payment by Contractor, and Contractor agrees to comply with any such requirement.

ARTICLE 21: BUY AMERICA REQUIREMENT (Applies only to Federally Funded Highway and Transit Projects)

With respect to products purchased by CUSTOMER/END USER 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/END USER regarding such programs. With respect to products purchased by CUSTOMER/END USER 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/END USER regarding such programs.

ARTICLE 22: DOMESTIC PREFERENCE

In accordance with 2 CFR 200.322, as appropriate and to the extent consistent with law, a CUSTOMER/END USER 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/END USER 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, they shall work with the CUSTOMER/END USER to provide all required certifications and other documentation needed to show compliance.

ARTICLE 23: 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 Master Agreement and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

ARTICLE 24: EQUAL EMPLOYMENT OPPORTUNITY

Except as otherwise provided under 41 CFR Part 60, all Contracts and CUSTOMER/END USER 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., pg.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. Contractor 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.

ARTICLE 25: CLEAN AIR AND WATER POLLUTION CONTROL ACT

CUSTOMER/END USER 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, Contractor 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.

ARTICLE 26: PREVAILING WAGE

Contractor 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.

ARTICLE 27: CONTRACT WORK HOURS AND SAFETY STANDARDS

As per the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), where applicable, all CUSTOMER/END USER 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.

ARTICLE 28: PROFIT AS A SEPARATE ELEMENT OF PRICE

For purchases using federal funds more than the current Simplified Acquisition Threshold of \$250,000, requires negotiation of profit as a separate element of the price. See, 2 CFR 200.324(b). Contractor agrees to provide information and negotiate regarding profit as a separate element of the price for the purchase. Contractor also agrees that the total price, including profit, charged by Contractor will not exceed the awarded pricing, including any applicable discount, under any awarded contract.

ARTICLE 29: BYRD ANTI-LOBBYING AMENDMENT

Byrd Anti-Lobbying Amendment (31 U.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/END USER. As applicable, Contractor agrees to file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 USC 1352). Contractor 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 Contractor, 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 Master Agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative Master 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 Master Agreement, Contractor shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.
3. Contractor 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 Master 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.

ARTICLE 30: COMPLIANCE WITH EPA REGULATIONS APPLICABLE TO GRANTS, SUBGRANTS, COOPERATIVE MASTER AGREEMENTS, AND CONTRACTS

Contractor certifies 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.

ARTICLE 31: COMPLIANCE WITH ENERGY POLICY AND CONSERVATION ACT

Contractor certifies that Contractor 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).

Request For Proposal #SC06-24

Title: Sewer/Storm Water, Hydro-Excavating Equipment and Related Services

4. Specifications/Categories/Scope of Work

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.

4.1. Categories

This Solicitation is divided into ten (10) separate but related product categories (A-J). When submitting a response, Respondent may choose to submit a response to any of the categories or all of them. No additional weighted value will be assigned to a response that addresses more than one or all categories listed. All equipment must be the manufacturer's new and current model and must be fully operational upon delivery to the Customer. Please note: awarded contracts for SC06-24 allow contractors to update their manufacturer pricing and product offerings at any time during the course of the four-year contract term.

Alternative Fuel Vehicles: All responses that include electric, hybrid, or other alternative fuel vehicles or equipment must list these vehicles in Category H. If that specific product is also available with an internal combustion engine (ICE), please list the ICE vehicle separately in the appropriate vehicle category. Category H should only include the alternative fuel vehicles, regardless of vehicle function or type.

Product categories are as follows:

- A. Sewer/Storm Water/Pipeline Cleaners - Truck and Trailer mounted**
- B. Jet Rodders - Truck and Trailer mounted**
- C. Hydro-Excavators - Truck and Trailer mounted**
- D. Sewer/Storm Water/Pipeline Inspection System - portable**
- E. Sewer/Storm Water/Pipeline Inspection System Vans and Trailers**
- F. Miscellaneous Sewer/Storm Water Cleaning Vehicles/Equipment**
- G. Miscellaneous Sewer/Storm Water Cleaning Services**
- H. Electric/Alternative Fuel Sewer/Storm Water Cleaning, Hydro-Excavator, Inspection, or related vehicles**

Response listings/descriptions must be organized by major sub-categories including Manufacturer, model, chassis, vehicle type, fuel/propulsion type, and function.

I. Sewer/Storm Water Cleaning and related vehicle Service/Maintenance Plans

Response listings/descriptions must include plan details, including details about which fees are included in costs, and items such as labor rates, and fee structures.

Request For Proposal #SC06-24

Title: Sewer/Storm Water, Hydro-Excavating Equipment and Related Services

J. Sewer/Storm Water Cleaning and related vehicle Parts and Supplies

Response listing need only to include catalog name and percentage discount.

Please include in your response a complete listing or catalog of vehicle option packages, dealer options, and accessories separately. Please clearly indicate if the options are model or vehicle specific, or only available for specific models or vehicles. Options must be clearly identified as upgrades or downgrades and clearly show the net effect to the price of the base model. Please upload in Section 10.1.6 - no zip files can be accepted.

This solicitation does not include the following types of vehicles, which are included in other HGACBuy contracts:

Earth Moving and Construction Equipment (EM06-19),

Street Sweeping Equipment (SW04-20),

Grounds and Turf Equipment (GR01-20), or

Medium and Heavy Duty Trucks and Truck Bodies (HT06-21).

4.2. Manuals and Base Model Specs

- A. Contractor must supply at the time of delivery, at least one complete owner's manual or complete operations and service documentation covering the completed vehicles as delivered and accepted.
- B. Respondent must supply the following information with their response: Technical Specifications, Product Brochures, Tear Sheets, Cut Sheets, Strippers, etc. which clearly show all the standard features and capabilities of each base model on the response listing. Please upload in Section 10.1.5 - no zip files can be accepted.

4.3. Service / Maintenance Plans and Parts

All service/maintenance plan listings must clearly indicate the cost structure for such plans, including which costs and fees are included (ex: hourly labor rates, shop fees, supply fees, environmental fees).

4.4. 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 and address
- HGACBuy confirmation number
- Product/Service purchased
- Customer Purchase Order Number
- Purchase Order Date

Request For Proposal #SC06-24

Title: Sewer/Storm Water, Hydro-Excavating Equipment and Related Services

- 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 the contract, recourse may be exercised through cancellation of the contract and other legal remedies as appropriate.

Attachment A
CUES, Inc.
Sewer/Storm Water, Hydro-Excavating Equipment and Related Services
Contract No.: SC06-24

Manufacturer	Model	Item Description	Offered List Price	HGACBuy Discount
		Category D – Sewer/Storm Water/Pipeline Inspection System-Portable		
Cues, Inc.	D1 - Mark 3 System	Mark3 - Portable Mainline TV Inspection System”, including: Pan and Tilt Zoom camera, Ultra Shorty self propelled tractor for 6"-15" lines, LCD Display with built in Power Control Unit, keypad and mounted on reinforced RAM assembly, built in DVR, compact reel with 1000' multi-conductor TV cable, auto payout retrieve and footage head, downhole equipment and one day training.	\$ 107,160.00	6%
Cues, Inc.	D2 - QZIII Pole Camera	QZ III Zoom Pole Camera system, including: wireless high definition camera, distance to defect, M.A.P. lighting, extendable telescoping pole, rechargeable battery and wireless control via GNET software(software sold separately).	\$ 20,478.00	6%
Cues, Inc.	D3 - MP+ Portable Pipeline Inspection System	MP+ - Portable Pipeline Inspection System : Portable lateral & mini-mainline push system. This modularly designed system stands out by integrating all of the most sought after features including video titling, video inspection coding, digital recording and portability into an easy to use and intuitive package. System includes a miniature self leveling camera with built in sonde, stainless steel durable wheeled coiler with 200' of push cable and large 8.4 industrial grade monitor with built in titling and digital recording in a weather/water resistant enclosure for 2" – 12" pipelines.	\$ 19,900.00	6%
Cues, Inc.	D4 - C541 Flexiprobe Plumbers Portable Inspection System	C541 Flexiprobe® Plumbers including Command Center, Mini reel with 100' push rod, 1" color camera, universal flexispring, skid set.	\$ 8,533.00	6%
Cues, Inc.	D5 - C541 Flexiprobe Mini Portable Inspection System	C541 Flexiprobe® Mini including Command Center, Mini reel with 115' push rod, 1" color camera, universal flexispring, skid set.	\$ 9,842.00	6%
Cues, Inc.	D6 - C542 Flexiprobe Standard Portable Inspection System	C542 Flexiprobe® Standard including Command Center, Standard reel with 200' push rod, 1" self-levelling color camera, universal flexispring, skid set.	\$ 10,695.00	6%
Cues, Inc.	D7 - C543 Flexiprobe Standard Portable Inspection System	C543 Flexiprobe® Standard including Command Center, Standard reel with 500' push rod, 1" self-levelling color camera, universal flexispring, skid set.	\$ 19,054.00	6%
Cues, Inc.	D8 - C550 Flexitrax Small Standard Portable Inspection Package	C550 Flexitrax Small Standard Package - Portable Inspection System, Motorized Drum with up to 1000' cable, 6" crawler with lift, Pan & Tilt Camera for Pipe Inspection of 6-18" diameter pipes. Comes complete with Downhole System and Command Module with built in joysticks.	\$ 62,623.00	6%
Cues, Inc.	D9 - C550 Flexitrax Large Standard Portable Inspection Package	C550 Flexitrax Large Standard Package - Portable Inspection System, Motorized Drum with up to 1000' cable, 8" crawler with lift, Pan & Tilt Camera for Pipe Inspection of 8" - 36" diameter pipes. Comes complete with Downhole System and Command Module with built in joysticks.	\$ 79,398.00	6%
		Category E – Sewer/Storm Water/Pipeline Inspection System Vans & Trailers		
Cues, Inc.	E1 - Hi-Cube Van Installation (Vehicle Provided by Customer)	Hi-Cube Van Installation (vehicle provided by customer) which includes: 14' aluminum hi-cube body with full height walk thru to viewing room from cab; Evolution Hi-Cube interior carpentry and outfitting; 7 KW on-board generator; Pan and Tilt Zoom camera; rack-mounted Power Control Unit (PCU); Data display system with 22" LCD rack-mounted monitor; rack-mounted DVR, TV cable reel with drop-down cable guide, footage head, and 1000' of multi-conductor cable; Ultra Shorty self propelled tractor for 6"-15" lines; maintenance kit, downhole equipment and two (2) days training.	\$ 205,050.00	6%
Cues, Inc.	E2 - Hi-Cube Van TV Inspection Vehicle	Hi-Cube Van TV Inspection Vehicle - Ford E450 Cutaway Van, 158" wheelbase, gas engine, automatic transmission, cab air conditioning, AM/FM Radio, 14,050 GVW which includes: 14' aluminum hi-cube body with full height walk thru to viewing room from cab; Evolution Hi-Cube interior carpentry and outfitting; 7 KW on-board generator; Pan and Tilt Zoom camera; rack-mounted Power Control Unit (PCU); Data display system with 22" LCD rack-mounted monitor; rack-mounted DVR, TV cable reel with drop-down cable guide, footage head, and 1000' of multi-conductor cable; Ultra Shorty self propelled tractor for 6"-15" lines; maintenance kit, downhole equipment and two (2) days training.	\$ 254,250.00	6%
Cues, Inc.	E3 - Step Van Installation (Vehicle Provided by Customer)	Step Van Installation (vehicle provided by customer) which includes: 16' Step Van body with Evolution interior carpentry and outfitting; 7 KW on-board generator; Pan and Tilt Zoom camera; rack-mounted Power Control Unit (PCU); Data display system with 22" LCD rack-mounted monitor; rack-mounted DVR, TV cable reel with drop-down cable guide, footage head, and 1000' of multi-conductor cable; Ultra Shorty self propelled tractor for 6"-15" lines; maintenance kit, downhole equipment and two (2) days training.	\$ 235,522.00	6%

Cues, Inc.	E4 - Step Van TV Inspection Vehicle	Step Van TV Inspection Vehicle - Ford F59 Step Van chassis, 178" wheelbase, gas engine, automatic transmission, cab air conditioning, AM/FM Radio, 19,500 GVW which includes: 16' Step Van body with Evolution interior carpentry and outfitting; 7 KW on-board generator; Pan and Tilt Zoom camera; rack-mounted Power Control Unit (PCU); Data display system with 22" LCD rack-mounted monitor; rack-mounted DVR-SD; TV cable reel with drop-down cable guide, footage head, and 1000' of multi-conductor cable; Ultra Shorty self propelled tractor for 6"-15" lines; maintenance kit, downhole equipment and two (2) days training.	\$ 288,628.00	6%
Cues, Inc.	E5 - Sprinter Installation (Vehicle Provided by Customer)	Sprinter Van Installation (vehicle provided by customer) which includes: Evolution Sprinter interior carpentry and outfitting; 7.5 KW Diesel on-board generator, Pan and Tilt Zoom camera; rack-mounted Power Control Unit (PCU); Data display system; 22" LCD rack-mounted monitor; rack-mounted DVR, TV cable reel with drop-down cable guide, footage head, and 1000' of multi-conductor cable; Ultra Shorty self propelled tractor for 6"-15" lines; maintenance kit, downhole equipment and two (2) days training.	\$ 186,863.00	6%
Cues, Inc.	E6 - Sprinter TV Inspection Vehicle	Sprinter TV Inspection Vehicle - Mercedes-Benz Sprinter 170" wheelbase, diesel engine, automatic transmission, cab air conditioning, AM/FM Radio, 11,030 GVW which includes: 14' body, Evolution Sprinter interior carpentry and outfitting; 7.5 KW Diesel on-board generator; Pan and Tilt Zoom camera; rack-mounted Power Control Unit (PCU); Data display system; 22" LCD rack-mounted monitor; rack-mounted DVR, TV cable reel with drop-down cable guide, footage head, and 1000' of multi-conductor cable; Ultra Shorty self propelled tractor for 6"-15" lines; maintenance kit, downhole equipment and two (2) days training.	\$ 261,636.00	6%
Cues, Inc.	E7 - Ford Transit Installation (Vehicle Provided by Customer)	Ford Transit Van Installation (vehicle provided by customer) which includes: Evolution interior carpentry and outfitting; 7 KW on-board generator, Pan and Tilt Zoom camera; rack-mounted Power Control Unit (PCU); Data display system; 22" LCD rack-mounted monitor; rack-mounted DVR, TV cable reel with drop-down cable guide, footage head, and 1000' of multi-conductor cable; Ultra Shorty self propelled tractor for 6"-15" lines; maintenance kit, downhole equipment and two (2) days training.	\$ 182,548.00	6%
Cues, Inc.	E8 - Ford Transit TV Inspection Vehicle	Ford Transit TV Inspection Vehicle - Ford Transit, 148" wheelbase, 3.7 L gas engine, automatic transmission, cab air conditioning, AM/FM Radio, 10,360 GVW which includes: Evolution interior carpentry and outfitting; 7 KW on-board generator; Pan and Tilt Zoom camera; rack-mounted Power Control Unit (PCU); Data display system; 22" LCD rack-mounted monitor; rack-mounted DVR, TV cable reel with drop-down cable guide, footage head, and 1000' of multi-conductor cable; Ultra Shorty self propelled tractor for 6"-15" lines; maintenance kit, downhole equipment and two (2) days training.	\$ 245,526.00	6%

 Awarded



CLOSED

Sewer/Storm Water, Hydro-Excavating Equipment and Related Services

 Request For Proposal

 HGACBuy/Cooperative Purchasing Program

 06578

Project ID: SC06-24

Release Date: Wednesday, November 29, 2023

Due Date: Thursday, February 8, 2024 12:00pm

 Posted  Wednesday, November 29, 2023 5:00am

 Bid Unsealed Thursday, February 8, 2024 12:08pm by Virginia Virgen

 Pricing Unsealed Thursday, February 8, 2024 12:08pm by Virginia Virgen

All dates & times in Central Time

Viewing

Phase 2 (current) 

Post Information

Posted At:

Wed, Nov 29, 2023 5:00 AM

Sealed Bid Process:

Yes (Bids Unsealed / Pricing Unsealed)

Private Bid:

No

1. Summary and Timeline

1.1. Summary

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.

H-GAC is soliciting responses for selecting qualified manufacturers, dealers, distributors, and service providers for sewer/storm water line cleaning, maintenance, and inspection, hydro-excavating equipment, and sewer/storm water line related services to make these types of products and services available to Customers of the HGACBuy Cooperative Purchasing Program under blanket type contracts. Customers (end users) 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.

1.2. Background

About the Houston Galveston Area Council Cooperative Purchasing Program

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 9000 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, ^{Exhibit "A"} 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 and issued as Master Agreements. 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.

1.3. Timeline

Date Issued:

November 29, 2023

Pre-Proposal/Bid Conference Date (Non-Mandatory):

December 12, 2023, 2:00pm

The virtual meeting will be held using Zoom, registration is required. Once registered, applicants will receive notification and a direct link for participation. Click on the following link to register:

<https://us06web.zoom.us/join/registration/tZYudemvqTIsHt2KfapcWviUOFPHgVWVPaR-#/registration>

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.

Questions Deadline:

December 15, 2023, 12:00pm

Closing Date/Submission Deadline:

February 8, 2024, 12:00pm

Estimated Contract Start:

June 1, 2024

2. Inquiries/Clarifications/Modifications/Submission

Respondents must submit questions by the Questions deadline. Telephone inquiries will not be accepted. H-GAC will respond as completely as possible to each question. Questions and answers will be posted as soon as available. The names of respondents who submit questions will not be disclosed.

All clarifications will be available in the Question and Answer and Addenda Sections in OpenGov, ^{Exhibit "A"} only the information in these sections should be used in preparing a response; verbal communications and other written documents intended to clarify and interpret will not legally bind H-GAC. H-GAC does not assume responsibility for the receipt of any clarifying information. Respondents must periodically check for updates.

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 of 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.

Submissions must be in PDF and Excel format ONLY. Other formats uploaded will be deemed non-responsive. Zip files are not accepted.

Responses may be submitted any time prior to the submission deadline. Respondents may modify submissions that have already been submitted, before the deadline. Recording of proposal submission time and date will occur via OpenGov. To satisfy any required public opening, the respondent list is made available in the OpenGov Public Portal after the deadline.

3. 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:

3.1. 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 execution. 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.

3.2. 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 Customers wherever and whenever practicable. Once a contract is executed, 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>

3.3. 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.

3.4. Manufacturer as Respondent

If Respondent is a manufacturer or wholesale distributor, the response received will be evaluated based on a response made in conjunction with that manufacturer's authorized dealer/reseller network. Unless stated otherwise, a manufacturer or wholesale distributor Respondent is assumed to have a documented relationship with their dealer/reseller network where that 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/reseller will be considered a sub-contractor of the Respondent. The relationship between the manufacturer and wholesale distributor Respondent and its dealer/reseller network must be indicated at the time of the submission.

3.5. Dealer/Reseller as Respondent

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

3.6. 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.

3.7. 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 allowing for the most appropriate and effective response to this Solicitation. Responses to this Solicitation will only be accepted in conformance with the below scenarios and requirements. Note: Respondent can only be a party to one response structure.

- A. 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 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. The use of any dealer or reseller is not required if manufacturer or distributor does not employ such.
- B. 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, in certain limited circumstances, H-GAC may allow the contract to be assigned to a Manufacturer or

another Dealer(s). Such assignment must be specific and detailed and must be approved by the ^{Exhibit "A"} Contractor and H-GAC. Once assigned, the Contractor and assignee may NOT sell or service the same product line or category.

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/reseller 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.

3.8. 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.

3.9. Administrative Fee

For each purchase order processed under an awarded contract, H-GAC will directly invoice the contractor an administrative fee (Order Processing Charge) applicable to the sale of all equipment and services submitted in contractor's response. It is the contractor's responsibility to remit the administrative fee within thirty (30) days of processing any customer's 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 this solicitation the administrative fee is as follows:

All Products and Services 2% of total Purchase Order amount

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

3.10. HGACBuy Contractor/HGACBuy Member General Procedures

- A. Contracts are awarded through fair and open competition in compliance with applicable procurement rules and regulations.
- B. The HGACBuy member sends a proposal request to an adequate number of Contractors in the desired Contract Category.
- C. The Contractor prepares and sends a proposal/quote to the HGACBuy member. The HGACBuy member conducts an evaluation of cost or price reasonableness, if the HGACBuy member is using \$250,000 (or current published Simplified Acquisition Threshold amount) or more of federal funds and an independent cost/price evaluation is necessary.
- D. The Contractor and the HGACBuy member agree on a Purchase Order. Purchase Orders/Supplemental Contracts are reported and sent by individual HGACBuy members to the Contractor and to HGACBuy, where pricing is confirmed against the contract, an Order Confirmation is issued to the HGACBuy Member and copies of the Purchase Order/Supplemental Contract are logged and filed.
- E. The Contractor delivers product(s)/service(s) directly to the HGACBuy member with a subsequent invoice the HGACBuy member upon completion of the work or delivery of the supplies.
- F. The Contractor receives payment directly from HGACBuy member.
- G. The Contractor reports and remits the administrative fee to HGACBuy.
- H. Reference also HGACBuy Customer and Contractor Handbook - <https://www.hgacbuy.org/bid-notices/solicitation-forms-resources>

3.11. 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"):
 - 1. 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.

2. 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 manufacturer or licensed franchised dealer at the time the Response is submitted.
- F. Contractor must have and maintain the appropriate license(s) as required by the State of Texas, Department of Transportation, Department of Motor Vehicles, Motor Vehicle Commission Code [latest edition], or any other local, state and federal licenses required, and which are applicable to the respondent's operations during the entire contract term. If during the contract period such licensing lapses, Contractor will be in default and become subject to contract termination unless issued a stay or waiver.
- G. The prescribed licenses must include the manufacturer/respondent, and any and all dealers and their representatives as may be required by the Motor Vehicle Department. Contractor must ensure all vehicles sold are in accordance with the laws of the state where the sale and acquisition are made.
- H. 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).

3.12. Warranty

Contractors must comply with the minimum warranty and maintenance requirements described below for any products or services provided under this Solicitation.

- A. Contractor must furnish with response, and for all equipment sold through this H-GAC contract, the manufacturer's general warranty, which must be honored by all the manufacturer's authorized

service locations.

- B. All service/maintenance plan listings must clearly indicate the cost structure for such plans, clearly indicating which costs and fees are included (such as: hourly labor rates, shop fees, supply fees, environmental fees).
- C. The Contractor will handle all warranty claims and all work must be completed within ten (10) calendar days after receipt of equipment/vehicle by the Contractor without cost to H-GAC or the Customer. Delayed warranties must be available for all vehicles and equipment. Warranty start date will be effective the date that the completed unit is placed into service by the Customer. The Contractor must furnish a delayed warranty card/document for each unit delivered and/or advise the Customer of the procedures to be followed for obtaining the delayed start of warranty coverage. Requests for delayed warranties will not exceed six months after delivery.
- D. Any and all documents necessary to effect manufacturer's warranty must be properly applied for and submitted by the Contractor and provided at the time of delivery. When additional warranties are available as standard, they must be included as a part of the response for the benefit of H-GAC and Customer.
- E. In the event any component part of equipment or materials furnished under these specifications, or its subsequent contract(s), becomes defective by reason of material or workmanship during said period, and the end user agency immediately notifies Contractor of such defect, Contractor will, at no expense to the End User agency or H-GAC, repair or replace equipment or component with new equipment or component.
- F. Warranty service of all system equipment is the sole responsibility of the Contractor under contract, but may be performed by their certified, designated agent.

3.13. Labor Hours Definitions

If the awarded contract contains hours for labor related services, the following definitions will apply:

- A. "Business Day" Monday through Friday
- B. "Business Hours" Standard Business Hours 8 a.m. to 5 p.m.
- C. "Regular Time" Work that occurs during standard business hours
- D. "Emergency Time" Work that occurs outside standard business hours

4. Specifications/Categories/Scope of Work

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 ^{Exhibit "A"}
***requirements before proceeding with a purchase order under this contract. Please consult legal
counsel regarding questions concerning compliance as a contractor under this solicitation.***

4.1. Categories

This Solicitation is divided into ten (10) separate but related product categories (A-J). When submitting a response, Respondent may choose to submit a response to any of the categories or all of them. No additional weighted value will be assigned to a response that addresses more than one or all categories listed. All equipment must be the manufacturer's new and current model and must be fully operational upon delivery to the Customer. Please note: awarded contracts for SC06-24 allow contractors to update their manufacturer pricing and product offerings at any time during the course of the four-year contract term.

Alternative Fuel Vehicles: All responses that include electric, hybrid, or other alternative fuel vehicles or equipment must list these vehicles in Category H. If that specific product is also available with an internal combustion engine (ICE), please list the ICE vehicle separately in the appropriate vehicle category. Category H should only include the alternative fuel vehicles, regardless of vehicle function or type.

Product categories are as follows:

- A. Sewer/Storm Water/Pipeline Cleaners - Truck and Trailer mounted**
- B. Jet Rodders - Truck and Trailer mounted**
- C. Hydro-Excavators - Truck and Trailer mounted**
- D. Sewer/Storm Water/Pipeline Inspection System - portable**
- E. Sewer/Storm Water/Pipeline Inspection System Vans and Trailers**
- F. Miscellaneous Sewer/Storm Water Cleaning Vehicles/Equipment**
- G. Miscellaneous Sewer/Storm Water Cleaning Services**
- H. Electric/Alternative Fuel Sewer/Storm Water Cleaning, Hydro-Excavator, Inspection, or related vehicles**

Response listings/descriptions must be organized by major sub-categories including Manufacturer, model, chassis, vehicle type, fuel/propulsion type, and function.

I. Sewer/Storm Water Cleaning and related vehicle Service/Maintenance Plans

Response listings/descriptions must include plan details, including details about which fees are included in costs, and items such as labor rates, and fee structures.

J. Sewer/Storm Water Cleaning and related vehicle Parts and Supplies

Response listing need only to include catalog name and percentage discount.

Please include in your response a complete listing or catalog of vehicle option packages, dealer options, and accessories separately. Please clearly indicate if the options are model or vehicle specific, or only available for specific models or vehicles. Options must be clearly identified as upgrades or downgrades and clearly show the net effect to the price of the base model. Please upload in Section 10.1.6 - no zip files can be accepted.

This solicitation does not include the following types of vehicles, which are included in other HGACBuy contracts:

Earth Moving and Construction Equipment (EM06-19),

Street Sweeping Equipment (SW04-20),

Grounds and Turf Equipment (GR01-20), or

Medium and Heavy Duty Trucks and Truck Bodies (HT06-21).

4.2. Manuals and Base Model Specs

- A. Contractor must supply at the time of delivery, at least one complete owner's manual or complete operations and service documentation covering the completed vehicles as delivered and accepted.
- B. Respondent must supply the following information with their response: Technical Specifications, Product Brochures, Tear Sheets, Cut Sheets, Strippers, etc. which clearly show all the standard features and capabilities of each base model on the response listing. Please upload in Section 10.1.5 - no zip files can be accepted.

4.3. Service / Maintenance Plans and Parts

All service/maintenance plan listings must clearly indicate the cost structure for such plans, including which costs and fees are included (ex: hourly labor rates, shop fees, supply fees, environmental fees).

4.4. 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 and address
- HGACBuy confirmation number
- Product/Service purchased
- 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 the contract, recourse may be exercised through cancellation of the contract and other legal remedies as appropriate.

5. Additional Resources/Website Links

5.1. Reference Websites

- HGACBuy Website – www.hgacbuy.org
- HGACBuy Events – <https://www.hgacbuy.org/events>
- HGACBuy Marketing – <https://www.hgacbuy.org/marketing>

Note: Sample Contract and Handbook are 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.

The actual final contract will be the same or nearly the same as the sample, however H-GAC reserves the right to update the actual contract as required for program or regulation requirements.

Note: Successful Respondents **MAY NOT** process any purchase orders for sales until all contract documents have been completely executed.

6. Additional Resource Documents/Attachments

An H-GAC Sample Contract with Master General and Special Provisions is provided below. The awarded contract will be the same or similar to the sample. H-GAC reserves the right to update the actual contract with any additional required terms and conditions as required for compliance to agency

and funding source requirements. Exceptions to these standard terms and conditions are not allowed, and will not be reviewed. Note: Sample Contract and Handbook are reference material only, do not constitute a contract, or become incorporated as requirements of this Solicitation. Exhibit "A"

Note: Successful Respondents **MAY NOT** process any purchase orders for sales until all contract documents have been completely executed.

 [A - HGACBuy_Solicitation_T&Cs v9.7.23](#)

 [B - HGACBuy-Contractor-and-Customer-Handbook](#)

 [C - Sample HGACBuy Master Agreement General and Special Provisions](#)

7. General/Additional Requirements

All Product Items priced and sold pursuant to this Solicitation must, as applicable:

- A. All equipment and vehicles must be new and be the manufacturer's latest and current model. Each vehicle must be fully assembled, adjusted, serviced and ready for immediate and continuous operation upon delivery.
- B. Meet all applicable requirements of federal, state and local laws and regulations.
- C. Be manufacturer's normal offering with all standard features and functions and performance levels.
- D. Be ready for turn-key operation upon delivery, including all standard and ordered optional equipment. If the equipment or vehicle does not meet the specification requirements upon delivery, Contractor will be responsible for correcting all deficiencies and making any corrections or adjustments needed to attain specification requirements.
- E. All equipment and vehicles must conform to applicable local, state, federal requirements and must comply to all applicable industry standards including National Fire Protection Association (NFPA), Department of Transportation, United States Coast Guard (USCG), and Occupational Safety and Health Administration (OSHA).
- F. Respondent must include specifications, brochures, warranty information, and any other relevant product information with solicitation Response.

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

8. Contract Term/Multiple Awards/Usage

Contract Term: H-GAC intends to award one or more contracts for the products/services requested ^{Exhibit "A"} under this Solicitation. The term of the resulting contract(s) will be for a period of four (4) years 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 the contract if deemed to be in the best interest of H-GAC and subject to H-GAC Board of Directors approval.

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.

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.

9. Goal for DBE Contracting

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 procurement requirements of 2 CFR §200.321, if subcontracts are to be let, the prime contractor must take the affirmative steps listed below:

- A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
- B. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources.
- C. 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.
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
- E. 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>.

Contractor agrees to work with and assist HGACBuy customer in meeting any small and minority businesses, women's business enterprises, and labor surplus area firms 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 small and minority businesses, women's business enterprises, and labor surplus area entity was considered in a procurement transaction, etc.

10. Submission Details/Uploads/Required Documents

1. Submission Upload Section

Please complete each section listed below and upload/respond to the questions or provide the information as directed.

1.1. Structure of Response*

In accordance with Section 3.7 Structure of Response, are you proposing as a **Single Respondent Acting Alone/"Lead" For A Group?**

- Yes
 No

*Response required

1.2. Structure of Response Continued*

In accordance with Section 3.7 Structure of Response, are you proposing as **Multiple Respondents Acting Jointly?**

- Yes
 No

*Response required

When equals "Yes"

1.2.1. Please list the names of Joint Respondents.*

Enter response

*Response required

1.3. Executive Summary Response*

Provide a summary of key aspects of the contractor’s qualifications and indicate the Respondent’s commitment to provide the 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.

*Response required

1.4. Pricing*

Pricing must include Manufacturer’s Suggested Retail Price (MSRP) or List Price and provide a **Percentage Discount from MSRP/List Price** which clearly indicates the percentage off from MSRP or List price that HGACBuy members would pay if purchasing from this contract. Respondents who are awarded contracts for these products/services will be required to provide HGACBuy comprehensive price lists for all base models and options included in the contract and will be required to provide pricing/product updates to HGACBuy throughout the entire contract period to keep the price lists and product offerings current. All pricing must be clear and easily understandable, and clearly represent the total price to acquire the products/services covered in this contract. Responses that fail to provide discounts for base units and options may be deemed non-responsive and disqualified from solicitation.

Please download the documents below, complete, and please **upload in Excel format**.

HGACBuy SC06-24 Solicitation							
Base Response Price List							
Respondent: ABC Sewer Cleaning Co. ***EXAMPLE***							
Category	Manufacturer	Model	Description	List/ MSRP Price	Discount (%) off Base Units	Discount (%) off Options	No Bid
A - Sewer/Storm Water/Pipeline Cleaners - Truck and Trailer mounted	A-1 Sewer Cleaners	TKM-combo	Truck mounted, 1500 gal with 12 yd	\$ 275,000.00	10%	10%	
	Basic Cleaners	TRbasic A-1	Trailer mounted sewer cleaner, 800 gal	\$ 75,000.00	10%	10%	
Add as many lines as needed per category.							
B - Jet Rodders - Truck and Trailer mounted							
C - Hydro-Excavators - Truck and Trailer mounted	Acme Hydro	TM500-2600	Truck mounted hydro excavator, 500 gal water, 2600 gal debris tank, diesel	\$ 120,000	15%	15%	
D - Sewer/Storm Water/Pipeline Inspection System - portable							
E - Sewer/Storm Water/Pipeline Inspection System Vans and Trailers							
F - Miscellaneous Sewer/Storm Water Cleaning Vehicles/Equipment							
G - Miscellaneous Sewer/Storm Water Cleaning Services							
H - Electric/Alternative Fuel Sewer/Storm Water Cleaning, Hydro-Excavator, Inspection, or related vehicles							
I - Sewer/Storm Water Cleaning and related vehicle Service/Maintenance Plans							
J - Sewer/Storm Water Cleaning and related vehicle Parts and Supplies							

[SC06-24_Base_Response_Price_List_Form1.xlsx](#)

*Response required

1.5. Base Model Specifications*

Please upload the specifications of each base model vehicle/product included on the Base Response Price List.

*Response required

1.6. Published Options Listing/Catalog*

Please upload your Published Options Listing/Catalog, or a link to your catalog.

*Response required

1.7. Customization Category Options*

Due to the ability to customize these vehicles, all responses must include Customization Tables. These Customization Tables are meant to encompass those special/custom options that are not classified as the published "Manufacturer Standard Options", and which may be used to customize Cars, SUVs, and Light/Medium Duty Trucks. Respondent will group these options into broad categories and include groups of specific options they would like to price within each of these customization categories. Respondent should quote as many categories as deemed necessary to cover any customization that may be required when configuring these vehicles.

Please number and name each category accordingly. Below are some examples of customization categories and options that could be used when configuring these categories. The format shown below illustrates how these categories should be listed on your form. Respondent will provide a price range for each Category, and pricing should specify the low and high price range (\$) for that specific category. This price range will apply to all options within the category (i.e. Category 1 – Chassis). Categories and pricing must be submitted on the Customization Category Options Pricing Sheet. Note: The sum of all Customization Category Options cannot exceed 25% of the total price (Base Model items + Published Options) on the HGAC Contractor Pricing Worksheet.

Please download the documents below, complete, and please **upload in Excel format.**

HGACBuy SC06-24 Solicitation			
Customization Categories Pricing Sheet			
Respondent: ABC Sewer Cleaning Co.			
EXAMPLE			
Category	Customization Description	Price Minimum	Price Maximum
ExampleInterior Customizations	Unpublished customization options for seating, materials, dimensions, interior features...	\$ 500.00	\$ 5,000.00
ExampleChassis Customizations	Unpublished customization options for engine, wheel, axle, drivetrain, transmissions...	\$ 1,500.00	\$ 35,000.00
ExampleExterior Customizations	Unpublished customization options for paint, lights, ...	\$ 500.00	\$ 12,000.00
ExampleDealer Options	Unpublished customization options for Dealer's Options...	\$ 200.00	\$ 8,000.00

[SC06-24 Customization Category Pricing.xlsx](#)

*Response required

1.8. Business Practices and Operations*

Please download the below documents, complete, and upload.

 [Business_Practices_and_Operations_v10.18.23.pdf](#)

*Response required

1.9. Distinguishing Services*

Please download the below documents, complete, and upload.

 [Distinguishing_Services_v10.16.23.pdf](#)

*Response required

1.10. Licenses/Certifications

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

1.11. Geographic Areas Served*

Please download the below documents, complete, and upload.

 [Geographic-Areas-Served_v10.11.23.pdf](#)

*Response required

1.12. Planned Authorized Retailers Distributors Dealers*

Please download the below documents, complete, and upload.

If no authorized distributors are planned for use, please provide a statement in your response that indicates no intent to use retailers/distributors, etc.

 [Authorized-Dealer-Distributor-Dealer_v11.27.23.pdf](#)

*Response required

1.13. References*

Please download the below documents, complete, and upload.

 [References_v10.11.23.pdf](#)

*Response required

1.14. Warranty, Service, and Technical Manuals

Submit detailed Warranty, Service, Technical Manuals, 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.

2. Required Documents/Certifications/Confirmations Section

The documents/certifications/confirmations below are required for every Solicitation.

2.1. Signature Page*

Please download the below documents, complete, and upload. **This form must be returned signed with the response or the submission will be deemed non-responsive and will be rejected.**

 [Signature_Page_-_HGACBuy_v10.18.23.pdf](#)

*Response required

2.2. Small and Minority Business, Women's Business Enterprise, and Labor Surplus Affirmation*

Please download the below documents, complete, and upload.

 [Small-and-Minority-Business-Women-Business-Enterprise-Labor-Surplus-Affirmation-Form_\(1\).pdf](#)

*Response required

2.3. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts*

Please download the below documents, complete, and upload.

 [Certification-Regarding-Debarment_\(1\).pdf](#)

*Response required

2.4. Certification Regarding Lobbying*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents of all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub- recipients 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 certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, United States 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.

Please confirm

*Response required

2.5. Certification Regarding Drug-Free Workplace Requirements*

The grantee certifies that it will provide a drug-free workplace by: (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition; (b) Establishing a drug-free awareness program to inform employees about— (1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation and employee assistance programs, and (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace. (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a); (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will— (1) Abide by the terms of the statement; and (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after each conviction; (e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction; (f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted— (1) Taking appropriate personnel action against such an employee, up to and including termination; or (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Please confirm

*Response required

2.6. Filing Reports Form 1295 Certificate of Interested Parties*

Please download the below documents, complete, and upload. Download a blank Form here:

<https://www.ethics.state.tx.us/filinginfo/1295/>

 [1295.pdf](#)

*Response required

2.7. Conflict of Interest Questionnaire*

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. H-GAC officers include its Board of Directors and Executive Director, who are listed on the H-GAC 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. The required questionnaire and instructions are located on the Conflict of Interest page on the Texas Ethics Commission website.

<https://www.ethics.state.tx.us/forms/conflict/>

Please confirm to acknowledge that the form will be filed if applicable.

Please confirm

*Response required

2.8. Contractor Status and Contact Form*

Please download the below documents, complete, and upload.

 [Contractor-Status-and-Contact-Form.pdf](#)

*Response required

2.9. No Excluded Nation or Foreign Terrorist Organization Certification*

Please download the below documents, complete, and upload.

 [No-Excluded-Nation-Foreign-Terrorist-Certification.pdf](#)

*Response required

2.10. HB89 SB52 Prohibition on Contracts with Companies Boycotting Israel Verification Form*

Please download the below documents, complete, and upload.

 [HB89-SB52-Verification-Form.pdf](#)

*Response required

2.11. Solicitation Terms and Conditions Confirmation*

By submitting a response to this Solicitation, respondent agrees that it has read and fully intends to comply with the terms and conditions of this solicitation as applicable to any subsequent contract or funding agency requirements or agreements. Exceptions to these Terms and Conditions are not permitted. Please view the full Terms and Conditions located in the Additional Resource Documents/Attachments section.

Please confirm

*Response required

2.12. Sample Master Agreement Confirmation*

By submitting a response to this Solicitation, respondent agrees that it has thoroughly read and fully intends to comply with the General and Special provisions of the Sample Master Agreement that respondent will be required to sign if awarded a cooperative contract. The awarded contract will be the same or similar to the sample. H-GAC reserves the right to update the actual contract with any additional required terms and conditions as required for compliance to agency and funding source requirements. Exceptions to these Master Agreement General and Special provisions are not permitted and will not be reviewed. Please view the Sample Master Agreement located in the Additional Resource Documents/Attachments section.

Please confirm

*Response required

2.13. Company W9*

Please upload a current company W9.

*Response required

11. Evaluation Criteria

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; if subcontracting, may include the completed Small and Minority Business Affirmation Form.

1. Products and Pricing

Price is competitive and all information is completed on the pricing sheets as set out in the submittal section of this solicitation. Demonstrated ability to deliver services at a reasonable cost and all elements of cost detail are provided. If offering services, reasonable total fee schedule/not to exceed hourly rates. Any travel associated expenses that may be incurred for additional offered services are priced separately and cannot exceed current U.S. General Services Administration established rates. For more information please visit: <https://www.gsa.gov/travel-resources>

Scoring Method:

0-5 Points

Weight (Points):

30 (30% of Total)

2. Business Practices and Operations

Completed Business Practices and Operations form. Detailed acceptable information is provided on Respondent's history, practices, and philosophies, demonstrating the respondent's ability to effectively support this contract and meet HGACBuy members' needs. Detailed information is provided about experience in fleet government sales and about the organizational structure and key staff, and their responsibilities, that would service and support this contract. All licenses and certificates are satisfactory and are provided as required by the Solicitation. Details are provided on any bankruptcies, legal actions, and safety and insurance claims with which Respondent has been involved during the past five (5) years.

Scoring Method:

0-5 Points

Weight (Points):

25 (25% of Total)

3. Distinguishing Services

Distinguishing Services form is complete, with detailed explanation of Respondent's business philosophies and actual practices which clearly evidence their commitment to quality and excellence in products and service. Provide details about Respondent's value added services, product and service innovations, awards and recognitions, and planned activities or campaigns to pursue an increased level of excellence in products and services. Provide details that clearly show a level of distinction and how Respondent's business operates above the minimum/average standards within their industry.

Scoring Method:

0-5 Points

Weight (Points):

20 (20% of Total)

4. Geographic Areas Served/Authorized Distributor

Detailed geographic coverage information is provided that demonstrates the ability to meet the needs of Customers throughout the United States. If applicable, dealer network is identified and details are provided explaining 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.

Scoring Method:

0-5 Points

Weight (Points):

10 (10% of Total)

5. Past Performance

An evaluation will be conducted of the Respondents previous contract performance as an HGACBuy contractor based on the performance measured listed below. Those with no history will receive the maximum for this criterion. NOTE: For joint responses, each party will be scored as outlined above and an overall average will be taken of all companies submitting a signed signature page to determine the overall score for each joint submission.

PERFORMANCE MEASURES (2% each)

- 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

Scoring Method:

0-5 Points

Weight (Points):

10 (10% of Total)

6. References

Provide at least five (5) adequate references and examples of fleet government sales to government customers in comparable size and requirements. Please provide contact information and details about what types and quantities of products were sold.

Scoring Method:

0-5 Points

Weight (Points):

5 (5% of Total)

12. Evaluation Process

In the event of any tie bids, H-GAC may award a contract 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.

An evaluation committee may consist of representatives from H-GAC and other stakeholders. The committee members will individually evaluate and numerically score each submission in accordance with the evaluation criteria section of this Solicitation. Submissions will be evaluated based on a total top score of 100. The committee members will individually evaluate and numerically score each submission in accordance with the evaluation criteria section of this Solicitation. Respondents with a score of at least **60** may be eligible for a contract award recommendation, at the sole discretion of H-GAC.

13. Selection/Final 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. 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. Awarded Contractor and H-GAC will identify specific goals, strategies and activities planned for meeting program objectives.

H-GAC reserves the right to accept or reject, in whole or in part, any or all responses received and to make an award on the basis of individual item, combination of items, or overall best value response, as it is deemed in the best interest of H-GAC and its Customers.

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

14. Presentation/Demo/Interview and Best and Final

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. Interviews can incorporate clarifying questions of the evaluation committee and H-GAC reserves the right to utilize the information to complete final scoring of proposals after the presentation/demonstration/interview. During this process, the proposer cannot incorporate, or present new information not contained in the original submitted proposal.

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).

15. Debrief/Protest

Requesting a Debrief: Requests for a debriefing must be made in writing to HGACBuySolicitations@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.

Resolution of Protested Solicitations: 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:

- A. Name, mailing address and business phone number of the complainant.
- B. Appropriate identification of the procurement being questioned.
- C. A precise statement of the reasons for the protest.
- D. 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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – DESIGNATED
PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

<p>Name Of Additional Insured Person(s) Or Organization(s):</p> <p>Any person or organization where required by written contract provided that such contract was executed prior to the date of loss.</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.