



COOPERATIVE/PIGGYBACK PURCHASE AGREEMENT

AGREEMENT SUMMARY:

1. Cooperative/Piggyback Name:	Houston-Galveston Area Council (H-GAC)
2. Contractor:	Motorola Solutions, Inc.
3. Cooperative Agency Agreement Name and Agreement Number:	H-GAC– Motorola Solutions, Inc., - Public Services – RA05-21, ID 7290
4. Cooperative Agency Initial Agreement Term:	Start Date: August 1, 2021 End Date: July 31, 2023
5. Cooperative Agency's Agreement-Options to extend:	One (1) additional one (1) year option to renew.
6. Cooperative Agency Amended Term:	N/A
7. Cooperative Agency Remaining Options to Renew:	One (1) year option to renew
8. City of Stockton Cooperative Purchase Agreement Term:	Start Date: upon execution End Date: July 31, 2023
9. City of Stockton Cooperative/ Piggyback Purchase Agreement Amount:	Not to Exceed \$410,000 for the term of the Agreement.

AGREEMENT

The City of Stockton, a California municipal corporation on behalf of itself and its associated entities ("City"), and the above-named Contractor ("Contractor"), do hereby agree that City shall be granted the pricing, terms, and conditions under the above referenced H-GAC Cooperative Agreement – Motorola Solutions, Inc., - Public Services – RA05-21, ID 7290 ("COOP") as such may be amended from time to time. The COOP and associated documents referenced in the agreement are incorporated herein as Exhibit A and Contractor's Communication System and Services Agreement ("CSSA") which operates as the End User agreement under Article 2 of the H-GAC Cooperative, is incorporated as Exhibit C to this City Cooperative/Piggyback Purchase Agreement ("Agreement").

Contractor shall grant such pricing, terms, and conditions to City for all procurements of goods and services, whether taking place on a City purchase order, purchasing card (credit card), or other purchasing modality, whether via telephone, via the Contractor website, or via direct purchase at a Contractor retail location.

1. **Agreement Term:** The Term of this Agreement shall remain in effect upon execution through July 31, 2023 unless terminated earlier by the City. If the Cooperative/Piggyback Agency extends the COOP with Contractor by a written amendment, the City has the option to extend the term of this Agreement by written amendment not to go beyond the term stated in the COOP fully executed amendment. Per Article 2 of the H-GAC Special Provisions, "the term of the EUA may exceed the term of the current H-GAC Master Agreement."

2. **Insurance and Hold Harmless:** In addition to the pricing, terms and conditions stated in the COOP and the associated documents incorporated herein as Exhibit A, Contractor shall, at Contractor's sole cost and expense and for the full term of the Agreement or any extension thereof, obtain and maintain at least all the insurance requirements listed in attached Exhibit B.

To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify the City of Stockton, its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, for personal injury, death, or direct damage to tangible property to the extent they are caused by the negligence of contractor or its officers, agents, or employees in rendering services under this contract. City will cooperate with Contractor in its defense or settlement of any claim or suit. This Section sets forth the full extent of Contractor's general indemnification of City from liabilities that are in any way related to Contractor's performance under this Agreement. The indemnification obligations of this section shall survive the termination of this Agreement.

3. **Compensation:** City and Contractor do hereby enter into this Agreement for Radio Communication equipment, goods and services available in the above-named COOP and associated documents incorporated herein as Exhibit A and referenced in the attached CSSA Exhibit C. Payment to the Contractor during the term of this Agreement shall not exceed \$410,000 for the purchase of Radio Communication equipment, goods and services unless mutually agreed to between the City and Contractor. Any person signing this Agreement on behalf of City or Contractor does warrants that he or she has full authority to do so.

4. **Governing Law.** California law shall govern any legal action pursuant to this Agreement with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the Federal District Court of California, Eastern District, Sacramento Division. Deliverables must conform with applicable federal, state and local laws. Such conformity includes compliance with federal sanctions and contractor certifies that it has not and will not engage in prohibited transactions with sanctioned persons or entities.

This Agreement may be amended only by a written amendment, consistent with the COOP, signed by Contractor and City.

Harry Black, City Manager

ATTEST:

Eliza R. Garza CMC, City Clerk

APPROVED AS TO FORM:

City Attorney,

MOTOROLA SOLUTIONS, INC.

By: 

Signature
Michael DeBenedetti

Print name

Title: VP MSSI and Dir. of Sales

*[If Contractor is a corporation, signatures must
comply with Corporations Code §313]*

By: _____

Signature

Print name

Title: _____

EXHIBIT A

H-GAC

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

Cooperative Agreement - Contract - Motorola Solutions, Inc. - Public Services - ID: 7290

MOTOROLA 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 Motorola Solutions, Inc., hereinafter referred to as the Contractor, having its principal place of business at 500 West Monroe Street, Chicago, IL 60661.

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.

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 Agreement.

ARTICLE 9: PERFORMANCE PERIOD

This Master Agreement shall be performed during the period which begins 08/01/21 and ends 07/31/23. 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 Agreement, or otherwise fails to satisfactorily render performances hereunder, H-GAC may terminate this 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 agreement for failure to perform may affect Contractor's ability to participate in future opportunities with H-GAC. The Contractor's failure to timely submit any report may also be considered cause for termination of this Agreement.

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

ARTICLE 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, which will not be unreasonably withheld. 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.

In no circumstances will Contractor be required to create or maintain documents not kept in the ordinary course of its business operations, nor will Contractor be required to disclose any information, including but not limited to product cost data, which it considers confidential or proprietary.

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

ARTICLE 19: RETENTION OF RECORDS

The Contractor and its subcontractors shall maintain all records pertinent to this Master Agreement, for a period of 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 thirty (30) calendar days 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 Increases

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

Price Changes

Any permanent increase or decrease in offered pricing for a base contract item or published option is considered a price change. Temporary increases in pricing by whatever name (e.g. 'surcharge', 'adjustment', 'equalization charge', 'compliance charge', 'recovery charge', etc.), are also considered to be price changes. For published catalogs and price sheets as part of an H-GAC contract, requests to amend the contract to reflect any new published catalog or price sheet must be submitted whenever the manufacturer publishes a new document. The request must include the new catalog or price sheet.

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

Requesting Price Increase/Required Documentation

Contractor must submit a written notification at least thirty (30) calendar days prior to the requested effective date of the change, setting the amount of the increase, along with an itemized list of any increased prices, showing the Contractor's current price, revised price, the actual dollar difference and the percentage of the price increase by line item. Price change requests must include H-GAC Forms D Offered Item Pricing and E Options Pricing, or the documentation used to submit pricing in the original Response and be supported with substantive documentation (e.g. manufacturer's price increase notices, copies of invoices from suppliers, etc.) clearly showing that Contractor's actual costs have increased per the applicable line-item bid. The Producer Price Index (PPI) may be used as partial justification, subject to approval by H-GAC, but no price increase based solely on an increase in the PPI will be allowed. This documentation should be submitted in Excel format to facilitate analysis and updating of the website. The letter and documentation must be sent to the Bids and Specifications manager, William Burton, at William.Burton@h-gac.com

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 Customer 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 thirty (30) days 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 Agreement for any reason whatsoever, or so fails to make progress or otherwise violates the Agreements that completion of services herein specified within the Agreement term is significantly endangered, and in either of these two instances does not cure such failure within a period of fifteen (15) 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. The party affected by the Force Majeure will notify the other within fifteen (15) days. Determination of force majeure shall rest solely with H-GAC.

ARTICLE 32: CONFLICT OF INTEREST

No officer, member or employee of the Contractor or Contractors 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 applicable 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 serious 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

Unless otherwise agreed upon between Contractor and the End User, 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.

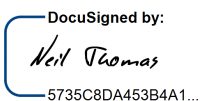
ARTICLE 51: WHOLE MASTER AGREEMENT

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.

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:

Motorola Solutions, Inc.

Signature  5735C8DA453B4A1...

Name Neil Thomas

Title Vice President, Western Region

Date 9/28/2021

H-GAC

Signature  82EC270D5D61423...

Name Chuck Wemple

Title Executive Director

Date 9/27/2021

H-GAC

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

Cooperative Agreement - Contract - Motorola Solutions, Inc. - Public Services - ID: 7290

MOTOROLA 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 AGREEMENTS ("EUA")

H-GAC acknowledges that the END USER may choose to enter into an End User Master Agreement (EUA) with the Contractor through this Master Agreement, and that 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 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 END USERS. 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 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 END USER. 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

***EXCEPTION:** This clause shall not be applicable to the sale of large communications systems (one million dollars (\$1,000,000.00) and above). The term "Communication Systems" shall refer to a project that includes the sale of infrastructure hardware and/or software, user devices, and Contractor engineering and installation service. The contract for a "Communication System" will always have a Statement of Work and an Acceptance Test Plan. This clause shall also not be applicable to pre-existing contracts Contractor has in the State of Texas. The term "pre-existing" shall refer to contracts in existence as of the effective date of this Agreement.*

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 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 END USER in accord with the law and venue rules of the state of purchase. Contractor shall immediately notify H-GAC of such disputes.

ARTICLE 6: SALES AND ORDER PROCESSING CHARGE

Contractor shall sell its products to END USERS based on the pricing and terms of this Master Agreement. H-GAC will invoice Contractor for the applicable order processing charge, which is listed and detailed in the attached "Addendum A" to this contract, when H-GAC receives notification of an END USER order. Contractor shall remit to H-GAC the full amount of the applicable order processing charge, after delivery of any product or service and subsequent END USER acceptance. Payment of the Order Processing Charge shall be remitted from Contractor to H-GAC, within thirty (30) calendar days or ten (10) business days after receipt of an END USER's payment, whichever comes first, notwithstanding Contractor's receipt of invoice. For sales made by Contractor based on this 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 an END USER procures from Contractor. At all times, Contractor shall remain liable to pay to H-GAC any order processing charges on any portion of the Master Agreement actually performed, and for which compensation was received by Contractor.

ARTICLE 7: LIQUIDATED DAMAGES

Any liquidated damage terms will be determined between Contractor and END USER at the time an END USER purchase order is placed.

ARTICLE 8: INSURANCE

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

- a. General liability insurance with a Single Occurrence limit of \$1,000,000.00, and a General Aggregate limit of two times the Single Occurrence limit, including:
 - i. Product liability insurance with a Single Occurrence limit of \$1,000,000.00, and a General Aggregate limit of 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.
- b. Property Damage or Destruction insurance is required for coverage of End User owned equipment while in Contractor's possession, custody, or control. The Single Occurrence limit is \$500,000.00 and the General Aggregate limit must be 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.
- c. 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.
- d. PDF Insurance Certificates must be furnished to H-GAC after contract execution and at policy renewal during term of contract, showing Contractor as the insured and showing coverage and limits for the insurances listed above.
- e. If any Product(s) or Service(s) will be provided by parties other than Contractor, all such parties are required to carry the insurance coverages specified herein, and if requested by H-GAC, a separate insurance certificate must be submitted for each such party.
- f. H-GAC reserves the right to contact insurance underwriters to confirm policy and certificate issuance and document accuracy.

ARTICLE 9: PERFORMANCE AND PAYMENT BONDS FOR INDIVIDUAL ORDERS

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

ARTICLE 10: ORDER PROCESSING CHARGE

H-GAC will apply an Order Processing Charge, listed in Addendum A to this contract, 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.

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 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, 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 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.

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

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

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

ARTICLE 20: BUY AMERICA REQUIREMENT (Applies only to Federally Funded Highway and Transit Projects)

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

ARTICLE 21: 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 22: EQUAL EMPLOYMENT OPPORTUNITY

Except as otherwise provided under 41 CFR Part 60, all Contracts and Customer Purchase Orders that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 shall be deemed to include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., 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 23: CLEAN AIR AND WATER POLLUTION CONTROL ACT

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

Pursuant to the Federal Rule above, 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 24: 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 25: 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 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 26: PROFIT AS A SEPARATE ELEMENT OF PRICE

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

ARTICLE 27: BYRD ANTI-LOBBYING AMENDMENT

Byrd Anti-Lobbying Amendment (31U.S.C. 1352) – Contractors that apply or bid for an award exceeding \$100,000 must file the required anti-lobbying certification. Each tier must certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the Customer. As applicable, 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 28: COMPLIANCE WITH EPA REGULATIONS APPLICABLE TO GRANTS, SUBGRANTS, COOPERATIVE MASTER AGREEMENTS, AND CONTRACTS

Contractor agrees to comply 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 29: COMPLIANCE WITH ENERGY POLICY AND CONSERVATION ACT

Contractor agrees to comply with applicable 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).

Addendum A- Applicable Order Processing Charge

Excerpt from page 6 of RFP #RA05-21:

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5. Dealer/Reseller as Respondent

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

6. Approval by Manufacturer

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

7. Administrative Fee

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

Contractor agrees that H-GAC will have the right, with reasonable notice, to inspect its records pertaining to purchase orders processed and the accuracy of the fees payable to H-GAC.

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;
- 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.

Attachment A						
Motorola Solutions Inc.						
Radio Communications/Emergency Response Equipment						
Contract No.: RA05-21						
Line Item Reference Number	Product Code	Product Summary (detailing the items, equipment and/or services being offered for the specific product code)	Manufacturer	Vendor	Item Description	Bid Price
1	PA	Mobile and Portable radios and accessories Base Stations and accessories Radio Trunked Systems Dispatch Consoles Mobile Data Systems Mobile Data Subscribers Mobile Computing Devices Broadband Wireless Mesh Infrastructure and Subscribers Video and Biometrics Radio Infrastructure (Towers, Shelters, UPSs and Generators) Broadband and LTE Equipment/Services Next Gen 911 Equipment/Services Intelligent Led Policing Real Time Crime Center/ Video Solutions CAD and Records Management Biometrics Applications	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	<i>Per the RFP Motorola has included an Electronics Catalogue (PCAT file of .pdf's) file in lieu of listing each individual product and its options. In addition, a discount APC sheet is attached in the pricing section and used to calculate all individual prices within the PCAT file.</i>	APC Summary Provided Below.
					<i>Motorola also offers an extensive on-line program called My View Portal that allows each H-GAC end user to check specific contract pricing, place orders, and check shipping estimates in addition to invoice history. The on-line tool is the most advanced of its kind in the Communications Industry.</i>	
2	PB	Integrated Command Control Equipment System Integration Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	<i>Per the RFP Motorola has included an Electronics Catalogue (PCAT file of .pdf's) file in lieu of listing each individual product and its options. In addition, a discount APC sheet is attached in the pricing section and used to calculate all individual prices within the PCAT file.</i>	APC Summary Provided Below.
					<i>Motorola also offers an extensive on-line program called My View Portal that allows each H-GAC end user to check specific contract pricing, place orders, and check shipping estimates in addition to invoice history. The on-line tool is the most advanced of its kind in the Communications Industry.</i>	

3	PC	Emergency Trailers System Integration Services Command Vehicles Integrated Emergency Operations Center Incident Command Systems	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	<i>Per the RFP Motorola has included an Electronics Catalogue (PCAT file of .pdf's) file in lieu of listing each individual product and its options. In addition, a discount APC sheet is attached in the pricing section and used to calculate all individual prices within the PCAT file</i>	APC Summary Provided Below.
					<i>Motorola also offers an extensive on-line program called My View Portal that allows each H-GAC end user to check specific contract pricing, place orders, and check shipping estimates in addition to invoice history. The on-line tool is the most advanced of its kind in the Communications Industry.</i>	
4	PD	Project Management System Technologist Training Advanced Services Video and Network Management Testing Civil Work (Soil grading, fencing, grub work, etc...) Tower Services (concrete/foundation work, documentation, civil work, etc...) Network Services for all category technologies Cloud Services and Associated Integration	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	<i>Motorola offers wide range of services including Integration, Installation and Training. The cost of these services is regional in nature. Samples below are listed for reference only.</i>	APC Summary Provided Below.
MOTOROLA INTEGRATION SERVICES - LMR						
Motorola offers wide range of services including Integration, Installation and Training. The cost of these services is regional in nature. Samples below are listed for reference only.						
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Project Management Daily Rate*	\$2,072
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	System Technologist Daily Rate*	\$2,072
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Standard Shop Installation: Hourly Rate*	\$150
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Standard Shop Installation: Daily Rate*	\$1,200
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Mobile Radio Installation*	\$180-\$600
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Radio Programming*	\$55-\$125
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Data Installation*	\$180-\$600
					*Prices may vary by Region and Stated Scope. Travel Not Included.	
MOTOROLA INTEGRATION SERVICES - ADVANCED SERVICES						
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	NG9-1-1 Consulting Services-Daily Rate*	\$1,900
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Security Project/Program Management-Daily Rate*	\$1,900
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Wireless Security Technician-Daily Rate*	\$1,900

			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Security Penetration Tester (Wired Network)-Daily Rate*	\$1,900
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Security Trainer-Daily Rate*	\$1,650
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Application Security Code Reviewer-Daily Rate*	\$2,100
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	IT Incident Response and E-Discovery Assistance-Daily Rate*	\$1,900
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	IT Disaster Recovery Planner-Daily Rate*	\$1,900
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	IT Disaster Recovery Plan Tester-Daily Rate*	\$1,900
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Business Continuity/Continuity of Government Planner-Daily Rate*	\$1,900
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Business Continuity/Continuity of Government Plan Tester-Daily Rate*	\$1,900
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Mobile Application Services Project Management-Daily Rate*	\$750
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Mobile Application Services Solution Achitech-Daily Rate*	\$2,100
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Mobile Application Services Application and Solution Design-Daily Rate*	\$2,100
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Mobile Application Services Application and Solution Implementation-Daily Rate*	\$2,100
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Application Integration and Customization Services Project Management-Daily Rate*	\$1,694
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Application Integration and Customization Services Solution Achitech-Daily Rate*	\$2,100
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Application Integration and Customization Services Application and Solution Design-Daily Rate*	\$2,100
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Application Integration and Customization Services Application and Solution Implementation-Daily Rate*	\$1,694
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Unified Communications Services Project Management-Daily Rate*	\$1,900
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Unified Communications Services Application and Solution Design-Daily Rate*	\$2,100
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Unified Communications Services Application and Solution Implementation-Daily Rate*	\$1,900
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Consulting Services Project Management-Daily Rate*	\$1,900
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Consulting Services Internet Protocol Network Assessment-Daily Rate*	\$2,100
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Consulting Services IP Network Design and Integration-Daily Rate*	\$2,033
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Consulting Services IP Wide Area Network Backhaul Design and Integration-Daily Rate*	\$2,100
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Consulting Services Customer Network Interface Design and Integration-Daily Rate*	\$2,100
APC SUMMARY						
	6	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO Dispatch Support	
	42	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO SUA Upgrade Operations Support	
	43	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO SUA Field Service Support	

	127	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Motorola Shop Services	
	135	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Drop Ship Freight	
	185	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Motorola Subscriber Services	
	208	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Motorola Project Management Services	
	231	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Motorola Partner Maintenance Support	
	290	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Motorola Warranty Services	
	298	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO System Essential Support	
	306	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Site Development Services	
	348	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO System Premier Support	
	373	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO System Advanced Support	
	390	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO System Manager Support	
	427	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	3rd Party Services	
	431	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Motorola Device Management Support - Essential	
	519	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO Security Monitoring Support	
	560	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO System Update Service Remote Patching Support	
	561	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO Network Monitoring Support	
	670	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Asset Management Service	
	700	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Motorola Device Management Support - Advanced	
	701	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Motorola Device Management Support - Premier	
	724	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Motorola APX Next Management Support - Advanced	
	769	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO Preventative Maintenance Support	
	772	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO Technical Support	
	814	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO Cyber Security Assessment Support	
	823	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO SUA Hardware & Software Support	
	847	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Lunarline Cyber Security Services	
	848	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Lunarline Cyber Security Monitoring	
	859	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Delta Risk Cyber Security Services	
	882	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO On-Site Support	
	929	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO Infrastructure Repair Support	

	943	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO SUA Training Service Support	
	948	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	3rd Party Maintenance Support	
	969	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO System Update Service Local Patching Support	
	901	Lifecycle Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Migration Assurance Program	
	902	Lifecycle Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	SMA	
	903	Lifecycle Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	SUA, SUA II	
	904	Lifecycle Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	SUS	
	905	Lifecycle Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	SA	
	390	Professional Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Performance Management Reports	
	659	Professional Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	NG-911	
	659	Professional Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Security, IP Networking	
	670	Professional Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	SI	
	842	Professional Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	311 Software	
	561	Service/Maintenance	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Network Monitoring	
	769	Service/Maintenance	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Network Preventive Maintenance & Onsite Infrastructure Response	
	769	Service/Maintenance	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	SUAII	
	772	Service/Maintenance	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Technical Support	
	929	Service/Maintenance	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Services	
	206	Service/Maintenance	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Subscriber Repair	
	293	Service/Maintenance	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Services/Training	
	17	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	PremierOne CAD Delivery Services	
	30	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Flex CAD Delivery Services	
	79	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Situational Awareness Delivery Services	
	86	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Emergency Notification Delivery Services	
	90	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	PremierOne Records Delivery Services	
	97	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Flex Records Delivery Services	
	99	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Flex Jail Delivery Services	
	141	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Digital Evidence Delivery Services	
	168	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Kodiak Delivery Services	

	327	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	CAD Mobile Delivery Services	
	331	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	CAD Suite Deployment	
	473	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Spillman Delivery Services	
	586	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	CallWorks Delivery Services	
	639	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Critical Connect Delivery Services	
	634	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Situational Awareness 3rd Party HW and SW or just HW	
	572	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Situational Awareness 3rd Party HW and SW or just HW	
	141	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Interface SA	
	144	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Professional Services, Training Analytics Plus Only	

Motorola Solutions' Offered Items Pricing (Catalog/ Price Book) is available on-line at: <https://www.hgacbuy.org/media/hgacbuy/catalogs/RA05-21/Motorola-Solutions.zip>



**HOUSTON-GALVESTON AREA COUNCIL
COOPERATIVE PURCHASING PROGRAM
Request for Proposal (RFP)
RADIO COMMUNICATIONS/EMERGENCY
RESPONSE EQUIPMENT
Solicitation Number: RA05-21**

EVENT	DATE
ISSUED:	Monday, February 22, 2021
PRE-PROPOSAL CONFERENCE DATE:	Thursday, March 04, 2021 @ 9:00 a.m. CST Please see Part VII for further details.
QUESTIONS DEADLINE:	Monday, April 05, 2021 @ NOON CST
CLOSING DATE / SUBMISSION DEADLINE:	Thursday, April 15, 2021 @ 1:00 p.m. CST
BID OPENING:	Thursday, April 15, 2021 @ 2:00 p.m. CST
BOARD APPROVAL DATE:	Tuesday, July 20, 2021
ESTIMATED CONTRACT START DATE:	August 2021
FORMAT:	One (1) electronic copy in PDF format.

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

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

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

SIGNATURE PAGE

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

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

Respondent is <u>REQUIRED</u> to sign this <i>Signature Page</i> and return with the submitted response. An unsigned Submission will be deemed non-responsive. If Joint Response - each Respondent must complete this Signature Page and all required forms.	
Legal Name of Entity/Individual Filed with IRS for this Tax ID Number:	
Doing Business As (DBA) Name:	
Is Respondent business currently a Certified Small Business (SBA), Minority (MBE) or Disadvantaged (DBE)? Yes_____ No_____ If yes, copy of certificate must be attached.	
Company Mailing Address:	
City, State, Zip Code:	
Billing Address (if different from company address):	
Tax ID Number (EIN):	DUNS Number (if applicable):
Contact Person:	Phone Number:
Email Address:	
Authorized Signature of the person authorized to bind Respondent company to any contract/purchase order that may result from this Solicitation:	
Authorized Signature:	Date:
Printed Name:	Title:
Email Address:	

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

PART I – GENERAL INFORMATION

Houston-Galveston Area Council (H-GAC) Background

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

About The Cooperative

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

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

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

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

Objective/Purpose

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

Additional Resources and Required Forms

- Required Forms – <https://www.hgacbuy.org/bid-notice/solicitation-forms>
- HGACBuy Website – www.hgacbuy.org
- HGACBuy Open Solicitations – www.hgacbuy.org/bid-notice
- HGACBuy Sample Contract – <https://www.hgacbuy.org/bid-notice/solicitation-forms>
- HGACBuy Customer and Contractor Handbook - <https://www.hgacbuy.org/bid-notice/solicitation-forms>

Contract Term

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

No Guarantee of Usage

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

Multiple Awards

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

Proforma Contract

Please visit <https://www.hgacbuy.org/bid-notice/solicitation-forms> to view the Pro-Forma Contract which successful Respondent will be expected to sign. The actual final contract will be the same or nearly the same as the Pro-Forma. NOTE: Successful Respondents MAY NOT process any purchase orders for sales until all contract documents have been completely executed.

Post Award Meeting

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

Solicitation Requirements

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

1. Contractor Orientation and Training

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

2. Nationwide Sales Opportunity

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

3. Corporate/Sales Commitment

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

4. Manufacturer as Respondent

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

5. Dealer/Reseller as Respondent

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

6. Approval by Manufacturer

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

7. Administrative Fee

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

Contractor agrees that H-GAC will have the right, with reasonable notice, to inspect its records pertaining to purchase orders processed and the accuracy of the fees payable to H-GAC.

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;
- 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.

PART II – SPECIFICATIONS /SCOPE OF WORK

Project Background

H-GAC is soliciting Responses for selecting qualified manufacturers, distributors, installers and service providers of RADIO COMMUNICATIONS/EMERGENCY RESPONSE EQUIPMENT to make these types of products and services available to Customers of the HGACBuy Cooperative Purchasing Program under blanket type contracts. Customers may require selective acquisitions of equipment and/or services OR full turnkey projects necessitating additional services, training and maintenance agreements. This solicitation may include a request for a discount percent off price catalog, category, or manufacturer, or price list for supplies, materials, or not to exceed hourly rates for installation or repair. **Note: Catalogs/Price lists bid with 0% discount from list/retail price may be deemed non-compliant. Discount must be shown as “List” instead of 0% for these items.**

This is an indefinite quantity/indefinite delivery offerings contract - 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. Please refer to granting agency for any compliance requirements before proceeding with a purchase order under this contract.

This Solicitation is divided into four (4) separate but related categories, Respondent is advised to offer a wide array, or catalog, of products within each product category listed below. When submitting a response, Proposer may choose to give a response on any of the categories or all. No additional weighted value will be given to a respondent who responds to more than one or all categories listed.

Product Codes and Categories:

Note: Respondent must indicate whether equipment being referenced is Digital or Analog equipment (must provide correct FCC license). If not referenced within the response it will be presumed to be Digital.

Category A: Radio Communication Equipment

Including Receivers/Pagers (programming only or licensing); Land Mobile Radios and Accessories; Base Stations and Accessories; Communication Control Console Systems; Portable Radios and Accessories; Radio Trunking Systems; Towers; Mobile Data Systems (MDS); Wireless Mobility Systems including Broadband and LTE; Networking including System-wide ; Biometric Applications.

Note: Respondents must reference Project 25 Phase I and Phase II throughout the proposal when referencing radio and trunking equipment/projects where applicable. Respondents with Project 25 equipment must provide P25 CAP testing documentation that meet or exceed this testing requirement upon request.

Category B: Emergency Response Command and Control Equipment

Includes state-of-the-art Emergency Response Command & Control Equipment and Systems that can be purchased by HGACBuy Customers. Actual operators of the equipment will be “first-on-the-scene” emergency incident response commanders who will need to control communications between various agencies, who will have diverse data access needs and networking interfaces, who may have the need to gather and transmit data from the scene.

Category C: Mobile Command Interoperable Communication Equipment

Includes systems and equipment for voice, data and video communication interoperable for mobile command systems. Access to wide area network will be via satellite, optional wireless (Wi-Fi) optional video network interfacing, optional networking and gateway interfaces, and cellular data networks. The capabilities provided by these systems will establish interoperability between the incident scene, the Integrated Emergency Operations Center (IEOC) and other Incident Command Systems (ICS) as applicable. H-GAC reserves the right to accept only proposals of interoperable equipment for compatibility, flexibility and uniformity reasons.

Category D: Services

Includes the types of services that Respondent may choose to offer Customers in order to integrate the various products offered in Categories A, B and C into complete systems or subsystems. These services will not diminish, or render void any installation, warranties, training or other related services that are a part of the products and services offered by Respondent in the other Categories.

These services may include support for deployment and implementation, testing, training. Installation services (in addition to the required standard installation), tower services (submission of required documents, physical installation, concrete/foundation work, civil work (soil grading, fencing, etc.), and any coordination with local utilities. Respondent may price integration services for products from any or all of the Categories but may not exclude a specific product or manufacturer within a Category for which Respondent is supplying a response. Respondent must provide a description of labor category in terms of title and minimum personnel qualifications, and a not to exceed hourly rate.

Note: Contractor is responsible for all costs associated with Interoperability Testing (IOT) for all purchased equipment ensuring Multi-Vendor Integration compatibility. Additionally, contractor must demonstrate participation in any testing program required by Federal Communications Commission rules if applicable at time Customer purchase order is issued.

Labor Hours Definitions

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

1. "Business Day" Monday through Friday
2. "Business Hours" Standard Business Hours 8 a.m. to 5 p.m.
3. "Regular Time" Work that occurs during normal business hours
4. "Emergency Time" Work that occurs outside normal business hours

For purposes of this invitation and any subsequent contract, all systems must be identified using a descriptive two (2) character alpha product code. The first character of the code will identify the Manufacturer and the second the Product Category (A, B, C or D). (Ex. Motorola Solutions Radio Communication Equipment & Services would be designated “PA”). Respondent must price the product code(s) of their choice and make reference to this code(s) on all required pricing forms. If the proposed manufacturer is not listed on the chart below it may be added to Form D – Offered Items Pricing Sheet as a new line.

A.	Alcatel-Lucent
B.	Avtec
C.	Base Camp Connect
D.	Bearcom Operating L.L.C
E.	Communications Applied Technology
F.	E. F. Johnson
G.	Harris Communications
H.	First In Software
I.	Hytera America
J.	Icom America
K.	Information Station Specialists (ISS)
L.	Intrado
M.	JPS Communications/Raytheon
N.	Kenwood
O.	Microwave Networks
P.	Motorola Solutions
Q.	ReadyOp
R.	Relm Wireless
S.	Sepura
T.	Tait Radio Communications
U.	Signal Boosters
V.	Zetron
W.	Activu Corporation
X.	Other/New Manufacturer

Minimum Requirements

Installation and Service:

1. The cost of installation must be included in the base system cost for all systems proposed, including all equipment, components and software. Basic installation means the system is fully operational.
2. If additional installation is needed by Customer, the Contractor must list on their Form E, a Not to Exceed hourly rate by title or personnel qualification for hardware or software installation.
3. Unless specifically agreed upon by the Contractor and the Customer, all initial installation of all equipment, software, and components must be done by the Contractor. The Contractor must also ensure that the proposed equipment is fully operational and performs properly.
4. The Contractor must furnish all components, wires, connectors, materials, parts, equipment and labor necessary for the complete installation of the system, in full accordance with recommendations of the Original Equipment Manufacturer (OEM).
5. Contractor must observe proper circuit polarities and special care must be taken to ensure that constant polarity is maintained. Contractor must provide adequate protection from electrical surges on any installed equipment.
6. Contractors must ensure that all systems are in first class working condition and free of short circuits, ground loops, video noise, and excessive system noise beyond published specifications of the equipment, hum, RF interference, or instability of any form.
7. At time of installation, the Contractor must provide owner's manuals, manufacturer's data sheets and a complete equipment list, with manufacturer's names, model numbers, serial numbers and quantities of each item provided. The Contractor must provide a comprehensive system schematics and labeling showing detailed connections to all equipment.

Warranty, Service, and Maintenance:

Contractors must comply with the minimum warranty and maintenance requirements described below for any products or services provided under this Solicitation. The Warranty, Service and Maintenance including any Extended Maintenance Agreements, must be described in detail on the Form E.

1. Hardware: Contractor will warrant hardware against defects in workmanship of product for a period of one (1) year from the date of acceptance of installation. Contractor will ensure that any part deemed to be defective or otherwise inoperative will be repaired or replaced at no cost to the Customer, if the term of the standard warranty has not expired.
2. Software: Contractor will warrant software against defects in workmanship of product for a minimum period of ninety (90) days from installation date of licensed software. Respondents must submit a copy of their software license agreements and give a brief overview of what the agreements entail.
 - 2.1 Contractor will offer the customer the option to purchase new releases of software in order to meet customer's need to maintain current level of software.
 - 2.2 Contractor guarantees that any corrections made to previously released code will be made available to the Customer, free of charge, if such corrections are released within the term of the standard software factory warranty.
 - 2.3 Contractor must provide a complete description of its warranty service, maintenance and extended maintenance programs, to include any Customer costs, hourly rates and/or any other expenses. Also included shall be lead times with respect to service calls and toll-free support numbers.

Training:

Contractor must provide the Customer comprehensive training on all equipment and software.

1. Initial Training: Contractor must provide a description of the initial training Respondent company will provide for system operators and system users. The training must include the following:
 - 1.1 Basic information about the system
 - 1.2 Description and instruction on use of the user interface(s)
 - 1.3 Customer must demonstrate complete understanding of all systems and operation.

2. Additional Training: Contractor must provide information on other types of training available such as certified technician training and or registration information.
 - 2.1 Additional training must be fully described on the Form E, to include any additional cost that may be incurred by the Customer.

Final Contract Deliverables

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

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

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

PART III – SOLICITATION SUBMISSION CONTENTS

Submissions must include the information described below. Please submit the electronic pdf with tabbed navigation reference labels to indicate the submission in the order of the alpha character as listed below (A through N).

A. Summary Letter/Narrative Statement

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

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

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

C. Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Affirmation Form located at www.hgacbuy.org/bid-notice/solicitation-forms (if subcontracts are to be let)

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

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

D. Warranty, Service and Manual Documents

Respondent must submit detailed Warranty, Service, Technical Manual, or other relevant information or booklets with the Response. Provide an electronic copy, in excel format only, of all catalogs bid in coordination with Form D & E pricing. Include Basic specification information for products and systems offered (e.g. cut/tear sheets, brochures, etc.); such that the basic capabilities and features of the equipment offered can be ascertained. If Respondent submits a warranty with the Response which does not meet any minimum stated requirements in the Solicitation, Respondent agrees by submission of the Response that such warranty is automatically amended to meet the minimums.

E. Marketing & Service Plan Form H

Submit completed Form H. H-GAC expects proposer to have the capability and willingness to serve any H-GAC Customers across the nation, and to promote any contract to the best of its ability. Respondent must submit a completed marketing and service plan form and include a detailed written narrative explaining in detail activities that will be undertaken to actively market and promote the awarded contract to H-GAC Customers and provide information on applicable items listed below:

1. Describe types of media to be used, frequency and method of outreach campaigns (social media, ads, sales tools, newsletters, etc.)
2. A description of the dedicated staff resources anticipated in serving and in promoting any contract.
3. Anticipated marketing strategies to increase sales in awarded service areas or categories
4. Anticipated employee representative trainings and frequency
5. Dedicated webpages or other online presence
6. Use of dealer or distributor networks
7. Use of existing company marketing teams and coordination with H-GAC's marketing team
8. Metrics employed to measure outreach and marketing success and measurement of sales

F. Geographic Areas Served/Authorized Distributor Form

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

1. Describe the company's Geographic Coverage and ability to meet the needs of Customers throughout the United States.
2. Detail the dealer network (nationwide) and describe how it will be used to provide products/services to H-GAC members nationwide.
3. Submit an approval letter from each manufacturer; authorization letters must include the regions in which equipment may be sold or serviced.
4. Provide a listing of all planned retailers/distributors, etc. that may be used during the term of this contract to deliver goods or services (awarded contractor remains responsible for the terms of the contract)

G. Business History/Viability

Submit information regarding at least the following:

1. Ownership history and current organization
2. Current capitalization and gross revenue for each of the last three (3) fiscal years.

H. Service Facilities and Personnel

Submit details regarding at least the following:

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

I. Service Capabilities/Capacity

Submit details, as applicable, regarding at least the following:

1. Technical support services/levels available, include information on 24/7 support and toll-free number or other contact method.
2. Services being provided to private customers/government
3. Website presence and functionality available to End Users. Include any automated order entry process and/or billing and payment capability available on your website

J. Licenses/Certifications

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

K. Products and Pricing Forms D and E (as applicable)

This response requires published catalog and/or price list pricing. List and/or price a manufacturer's published catalog and/or price lists with % discounts. The information must be provided on H-GAC Form D Offered Items Pricing Sheet and in searchable PDF electronic format. Further, no paper catalogs or manufacturer/vendor websites will be accepted. Form E Published Options Pricing is included in the bid package to allow pricing of those options that are not included in a particular catalog (e.g. extended warranty, additional training). Respondent must provide:

1. Standard published pricing containing all products that will be offered for sale through the Program
2. Pricing must be provided in either an itemized/component format or in a standard manufacturer published catalog or price list showing the % discount off retail/list (where applicable) on Form D Offered Items Pricing Sheet. Catalogs/Price Lists **MUST** be identified (name, year, edition etc.) on Form D Offered Items Pricing Sheet as a line item along with % discount. **For Line items pricing, use TAB A, for price book listing use TAB B.**
3. Respondent to list pricing of those options in a Not to Exceed Rate or Not to Exceed Cost that are not included in a catalog (e.g. extended warranty, additional training, quantity discounts) or other incentive programs which will be made available through the program on Form E Published Options Pricing.
4. If submitting a response in more than one Product Category, a single Form E will suffice. However, each Form must be subdivided for each H GAC Product Category being addressed in the response.

Note: Options bid on Form E Published Options Pricing must be associated with the manufacturer/product code being proposed on Form D Offered Items Pricing Sheet. For example, if you are proposing Motorola Radio & Communication Equipment (PA) on Form D Offered Items Pricing Sheet, only options associated with Motorola (mfg.) may be listed/priced on Form E Published Options Pricing.

L. Catalogs and Price Lists

Provide an electronic copy, in excel format only, of all catalogs bid in coordination with Form D Offered Items Pricing & Form E Published Options Pricing. Include Basic specification information for products and systems offered (e.g. cut/tear sheets, brochures, etc.); such that the basic capabilities and features of the equipment offered can be ascertained.

M. Project Organization and Management Plan

If offering services: submit a project organization and management plan that includes project staffing with an indication of the personnel to be involved, their respective roles, and a not to exceed hourly rate by labor title category. A general summary of the approach to be used in accomplishing the work must be given. Describe functions and responsibilities of the staff involved. Submissions must clearly delineate all individuals, by names and titles that will be working on this plan and their areas of responsibility. If substitutes or back-up personnel are planned on a contingency basis, they must be indicated in the plan. (Maximum 3 pages)

N. References

Provide references from **at least five (5) government and/or non-profit entities** which have purchased offered Products within the past two (2) years. At a minimum, please include the following information (Maximum 2 pages):

1. Entity name
2. Contact person's name, address & phone number
3. Description and value of product(s) purchased
4. If company provides services nationwide, list references outside of Texas

Respondent is encouraged to include any letters of endorsement which may be available from the supplied references., H-GAC reserves the right to consider historic information and other facts in its proposal evaluations, whether gained from this proposal, references, or any other source.

PART IV – TERMS AND CONDITIONS

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

A. H-GAC Terms and Conditions

1. H-GAC will not pay for any expenses incurred prior to the execution date of a contract, or any expenses incurred after the termination date of the contract.
2. Except as stated below, all materials submitted to H-GAC, including any attachments, appendices, or other information submitted as a part of a submission, are considered public information, and become the property of H-GAC upon submission and may be reprinted, published, or distributed in any manner by H-GAC according to open records laws, requirements of the US Department of Labor and the State of Texas, and H-GAC policies and procedures. In the event the respondent wishes to claim portions of the response are not subject to the Texas Public Information Act, it shall so indicate on the response; however, the determination of the Texas Attorney General as to whether such information must be disclosed upon a public request shall be binding on the respondent. H-GAC will request such a determination only if respondent bears all costs for preparation of the submission. H-GAC is not responsible for the return of creative examples of work submitted.
3. H-GAC will not be held accountable if material from submissions is obtained without the written consent of the contractor by parties other than H-GAC, at any time during the evaluation process.
4. Contract Termination:
 - a. *Convenience*
H-GAC may terminate this Contract in whole or in part without cause at any time by written notice by certified mail to the Contractor whenever for any reason H-GAC determines that such termination is in the best interest of H-GAC. Upon receipt of notice of termination, all services of the Contractor and its employees and subcontractors shall cease to the extent specified in the notice of termination.
 - b. *Default*
H-GAC may, by written notice of default to the Contractor, terminate the whole or any part of the Contract in any one of the following circumstances:
 - (1) If the Contractor fails to perform the services herein specified within the time specified herein or any extension thereof; or
 - (2) If the Contractor fails to perform any of the other provisions of this Contract for any reason whatsoever, or so fails to make progress or otherwise violates the Contract so that completion of the services herein specified within the agreement term is significantly endangered, and in either of these two instances Contractor does not cure such failure within a period of ten (10) days (or such longer period of time as may be authorized by H-GAC in writing) after receiving written notice by certified mail of default from H-GAC.

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

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

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

C. Anti-Competitive Behavior

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

D. Contact by Respondent

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

E. Updates to the Solicitation

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

F. Interpretation of Specifications

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

G. Suspension and Debarment

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

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

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

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

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

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

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

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

I. H-GAC Responsibilities

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

J. Structure of Response

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

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

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

2. Multiple Respondents Acting Jointly:

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

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

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

K. Line Item Bids

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

L. Percentage Discount from Catalog or Category

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

M. Contract Price Adjustments

1. Price Decreases

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

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

2. Price Increase

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

3. Price Changes

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

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

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

4. Requesting Price Increase/Required Documentation

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

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

5. Review/Approval of Requests

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

N. Contract Item Changes

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

O. Change Orders

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

P. Pricing Discrepancies

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

Q. Requirements Applicable to Physical Goods

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

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

R. Deliveries/Shipping Terms

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

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

S. Restocking (Exchanges and Returns)

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

T. Samples

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

U. Measurements

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

V. Product Codes

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

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

W. Options – General

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

Required Options

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

Upgrade/Downgrade Options

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

X. Manuals

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

Y. Out of Stock/Product Recalls/Discontinued Products

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

Z. Standard Features

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

AA. Brand Name or Equivalent

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

BB. Warranties, Sales and Service

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

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

CC. Variances

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

DD. HGACBuy Order Processing Charge

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

EE. Distributors, Vendors, Resellers etc.

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

FF. Tax Exempt Status

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

GG. Payment for Work

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

HH. Payment Terms/Pre-payment/Quantity Discounts

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

II. Inspection/Testing

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

JJ. Background Checks

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

KK. Architecture and Engineering Services

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

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

Chapter 176 of the Texas Local Government Code requires contractors contracting or seeking to contract with H-GAC to file a conflict of interest questionnaire (CIQ) if they have an employment or other business relationship with an H-GAC officer or an officer's close family member. The required questionnaire and instructions are located on the H-GAC website or at the Texas Ethics Commission website <https://www.ethics.state.tx.us/forms/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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SS. Domestic Preference

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

TT. Title VI Requirements

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

UU. Equal Employment Opportunity

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

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

VV. Clean Air and Water Pollution Control Act

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

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

WW. Prevailing Wage

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

XX. Contract Work Hours and Safety Standards

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

YY. Profit as a Separate Element of Price

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

ZZ. Byrd-Anti Lobbying Amendment

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

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

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

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

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

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

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

BBB. Compliance with Energy Policy and Conservation Act

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

CCC. Procurement of Recovered Materials

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

DDD. Copeland “Anti-Kickback” Act

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

EEE. Discrimination

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

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

FFF. Insurance

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

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

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

GGG. Drug-Free Workplace

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

HHH. Applicability to Subcontractors

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

III. Warranty and Copyright

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

JJJ. Data Handling and Security

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

KKK. Resolution of Protested Solicitations and Awards

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

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

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

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

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

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

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

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

PART V – EVALUATION, SELECTION AND AWARD

Evaluation

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

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

Submissions will also 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 80 may be eligible for a contract award recommendation, at the sole discretion of H-GAC.

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

Selection

It is the intent of H-GAC to award for any competitive pricing, on the basis of overall low net bid meeting specifications for the entire Contract. H-GAC reserves the right to accept or reject in whole or in part any or all bids received and to make an award on the basis of individual item, combination of items or overall best bid, as it is deemed in the best interest of H-GAC and its Customers.

Upon review of all information provided by Respondents, the evaluation committee will rank each submission. H-GAC intends to select a submission that best meets the needs of H-GAC, and other stakeholders to be determined.

Board Approval and Award

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

Tie Bids

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

Debriefing

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

Presentation/Demonstration/Interview

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

Best and Final Offer (BAFO)

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

PART VI – SOLICITATION EVALUATION CRITERIA

Responsiveness (Pass/Fail)

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

Products and Pricing (30%)

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.

Project Management, Organizational Structure and Key Personnel (10%)

Demonstrated qualified Project Manager. Demonstrated effective organizational structure and responsibilities of the staff involved, licenses (of required) are provided. Key personnel assigned to the project possess necessary qualifications and be able to perform the work.

Past Performance (10%)

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.

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

Marketing Plan (10%)

A detailed written narrative is provided and outlines activities that will be undertaken to actively market and promote the awarded contract. The marketing plan is clear and comprehensive and incorporates the details as required by the submittal criteria.

Geographic Areas Served/Authorized Distributor (10%)

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

Service Facilities and Personnel (10%)

Detailed information is provided and includes at least the following:

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

Business History/Viability (10%)

Detailed information is provided and demonstrates acceptable business viability Information submitted includes at least the following:

1. Ownership history and current organization
2. Current capitalization and gross revenue for each of the last three (3) fiscal years.

Warranty, Service, and Manual Documents (5%)

Detailed Warranty, Service, Technical Manual, or other relevant information or booklets are provided and meets any minimum stated requirements in the Solicitation.

References (5%)

At least five (5) adequate references and examples of previous, similar work in comparable service or product delivery and minimum requirements are provided. References are acceptable.

PART VII – INSTRUCTIONS TO RESPONDENTS

Pre-Proposal/Response Conference

A Pre-Proposal Conference will be held on **Thursday, March 04, 2021** @ 9:00 a.m. The virtual meeting will be held using Microsoft Teams. The meeting link will be posted to: <https://www.hgacbuy.org/bid-notices>. The meeting can also be accessed by clicking on the following link: https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZDE3ZDQ1YjUtM2VINi00NjhiLWFjZjEtOTRiNmI5M2U5MWNl%40thread.v2/0?context=%7b%22Tid%22%3a%22a268f37c-2197-43bf-bbbb-a75e994ad962%22%2c%22Oid%22%3a%22d2f154cd-0e36-47a4-bad3-05f4f646f64c%22%2c%22IsBroadcastMeeting%22%3atru%7d

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

Inquiries and Additional Information

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

Letter(s) of Clarification

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

Examination of Documents and Requirements

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

Modification of Submission (Before Deadline)

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

Non-Responders to Solicitation

If unable to submit a response, please email Brian.Denzel@h-gac.com and advise the reason.

PART VIII – REQUIRED FORMS TO SUBMIT WITH RESPONSE

Download at: https://www.hgacbuy.org/bid-notice/solicitation-forms	
	Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Affirmation Form (if subcontracts are to be let)
	Signed Signature Page (located on Page 2)
	Form A - Contractor Status and Contact Form
	Form D - Offered Items Pricing (if applicable)
	Form E – Published Options Pricing (if applicable)
	Form H – Marketing and Service Plan
	Planned Authorized Retailers Distributors Dealers Form
	Geographic Areas Served Form

	Certification Regarding Debarment
	No Excluded Nation or Foreign Terrorist Organization Certification
	House Bill HB89 Verification Form
	Conflict of Interest (if a conflict exists)
	Verification of filing – Form 1295
	Certification Regarding Lobbying
	Copy of W-9

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

BUSINESS



Elizabeth Conley / Staff photographer

Out-of-state companies sign power purchase agreements for enough wind or solar power to offset their carbon footprint back home. They can then claim they are powered by green energy.

TOMLINSON

From page B1

build there. Instead, they decide to offset the power they get from coal and natural gas plants by buying and selling electricity halfway across the country, most likely in Texas.

Texas has a lot of wind and sunshine, which makes it perfect for these investments. But another reason we have so much renewable energy is the state's wholesale electricity market, which makes it easy to build new projects and sell the power. A Michigan cardboard box factory can easily trade in electricity as a side hustle.

Out-of-state companies sign power purchase agreements for enough wind or solar power to offset their carbon footprint back home. They can then claim they are powered by green energy. But since the Electric Reliability Council of Texas grid does not allow exports to other states, the company must sell the clean energy to the wholesale market and use dirty energy from their local grid.

This arrangement creates an opportunity to make big profits when wholesale prices spike in Texas, like during the

freeze. Too many of these deals benefit the company's bottom line at the expense of consumer reliability.

To keep things simple, let's use wind energy as an example. For decades, wind projects could not compete financially with coal and natural gas, so the federal government offered a temporary \$23 tax credit for every megawatt-hour produced. That leveled the playing field and spurred the industry.

Generating tax credits is now as crucial to the project's profitability as the electricity itself. Operators routinely offer electricity to the ERCOT market for free in order to capture the \$23 a megawatt-hour tax credit, which was not a big deal when wind generation was minuscule.

But as wind took greater market share, fossil fuel operators, which by most estimates need at least \$20 a megawatt-hour to make money, became increasingly frustrated. They cannot compete with free, and they will certainly not invest in new power plants or even battery storage if they cannot make a reasonable profit.

Federal lawmakers created this distortion because they prefer to hand out credits rather

than impose new taxes. Oil and gas companies also receive subsidies through other mechanisms. I would suggest Congress eliminate all subsidies and tax greenhouse gas emissions instead, something I've written about before.

Power purchase agreements, known as PPAs, allow companies to buy clean energy and generate tax credits. The wild price swings in the ERCOT market offer them a chance to sell electricity at a profit. But whether a PPA buyer is in-state or out-of-state makes a difference.

Local companies that rely on ERCOT electricity want an affordable and efficient grid. They are more likely to push for weatherization regulations. But out-of-state PPA owners crave price spikes to make money and do not want to spend one penny more than they must.

Dozens of companies made millions during the Texas blackouts because their projects kept operating. The proceeds from ERCOT customers' enormous bills will go to some of the world's most famous brands, which told customers they were going green to save the planet when they were actually making a profit.

The solution is not to get rid of PPAs but to incentivize reliable generation. Texas needs common sense regulations and to connect ERCOT to the rest of the country. That would allow ERCOT to not only import juice when we need it but to sell it when we have too much and allow everyone to make greater profits.

Many nights the wind in West Texas blows so hard that the wind turbines produce more electricity than the state can use. ERCOT's control room has to order operators to feather their blades so the grid is not overloaded, the opposite of what happened last month. Generators could sell that extra power.

Texas has more energy in more forms than any other state. If our leaders are smart, they will allow transmission lines to supply renewable energy to the rest of the country, knowing that those same transmission lines will save us from another disaster during those few days when we come up short.

Tomlinson writes commentary about business, economics and politics.
twitter.com/cltomlinson
chris.tomlinson@chron.com

CERAWEEK

From page B1

more important time to gather industry leaders to discuss the changing energy landscape – even if it's virtually because of the ongoing pandemic.

"CERAWeek has often been called the Super Bowl of energy," said Jamey Rosenfield, a conference co-founder. "And if you think about the Super Bowl, it's a very important event to be there physically, but it's also amplified and seen by millions of people around the world. CERAWeek is a conference, but it's also a global community."

The 39th annual CERAWeek, which begins Monday, will feature more than 140 online sessions covering topics on oil and gas, alternative energy, the energy transition, geopolitics and emerging technologies such as carbon capture, electric vehicles and battery storage. There will be more than 400 speakers, including Microsoft founder and philanthropist Bill Gates, Saudi Aramco CEO Amin Nasser, Chevron CEO Mike Wirth, ConocoPhillips CEO Ryan Lance, Occidental Petroleum CEO Vicki Hollub, and Houston Mayor Sylvester Turner.

After last week's winter storm that knocked out power plants and caused widespread blackouts in Texas, CERAWeek organizers quickly added a session on the impact of the power failure on electric grids and making



Michael Wyke / Contributor

CERAWeek by IHS Markit is going virtual this year after canceling the 2020 event due to the pandemic.

energy sources more resilient to extreme weather conditions.

"One of the hallmarks of CERAWeek is bringing together this critical mass of expertise and perspective," said Dan Yergin, IHS Markit chairman and co-founder of CERAWeek. "So, we invented from scratch a whole new session just focused on the implication of the crisis in Texas."

The conference also will feature several members of the Biden administration, including the U.S. climate czar, former Secretary of State John Kerry, and White House Climate Advisor Gina McCarthy, the former EPA administrator, who has spoken at the conference in past years.

Organizers said Biden administration officials wanted to introduce themselves to the energy industry at the conference and field questions from attendees about their plans to combat climate

change, in particular regulations around carbon emissions and the environment.

"A focus of the Biden administration is to create a dialogue between policymakers and the energy industry," Rosenfield said. "They recognize that this is the forum to have that kind of discussion, where you're going to get a lot of diverse viewpoints."

Organizers acknowledged CERAWeek has become more diverse in its lineup of speakers and attendees over the years, particularly as concern over climate change has driven debate over the future of fossil fuels. The conference, which started out focused solely on oil and gas, has branched over the years to solar, wind, hydrogen and geothermal energy, as well as biofuels.

Innovation and technology also will play a role in the conference as oil majors invest billions of dollars into new lab-

oratories and start-up accelerators researching and developing carbon capture technology and alternative energy sources. Noubar Afeyan, chairman of the biotech company Moderna and a bio-fuels investor, is slated to speak about lessons the oil and gas industry can learn from the pharmaceutical company's rapid development of the coronavirus vaccine.

Although the conference is virtual this year, organizers said they believe CERAWeek will have a larger scale and impact because attendees won't have to hop on a plane to learn from the world's top energy leaders. Organizers said they are expecting higher attendance this year, especially from Southeast Asia and Africa.

Still, CERAWeek organizers said they plan to bring the conference back to Houston next year. The conference, which typically draws some 6,000 attendees from 85 countries to Houston, has been a boon to the local economy, particularly downtown hotels and restaurants that have struggled this past year to survive the pandemic.

"We're building back better and bigger in terms of impact and reach, but we do intend to be back in Houston in 2022," Rosenfield said. "We're very committed to being in Houston. Our partnership with Houston goes back decades and will continue for decades."

paul.takahashi@chron.com
twitter.com/paultakahashi

Legal Notices

To place legal notices
email legals@chron.com or call 713.224.6868.

Legals/Public Notices

enTouch strives to keep prices as low as possible. From time to time it is necessary to make adjustments to one-time charges due to costs associated with administration and management of our customer accounts and services. Below please find a listing of non-recurring, one-time charges we will be implementing along with minor rate adjustments for fees already in effect. These changes will go into effect on or about April 1, 2021. Please note, unless otherwise noted, the listed costs and/or fees are neither government mandated nor a tax imposed on you by the government; they are costs and/or fees enTouch assesses and retains.

Description	Charge (per instance)
Account Activation Fee	\$9.99
Customer Equipment Hookup Fee	\$39.00
Auto-pay Denial Fee	\$79.95
Technician Visit	\$15.00
Late Fee	\$40.00
Non-pay Restoral Fee	Up to \$8.50
Payment Convenience fee	\$10/month/service
Seasonal Program	
Home Networking (per 2nd, 3rd and 4th Computer or Device)	Up to \$14.95

For any questions, please reach out to our enTouch care team.

NOTICE OF PUBLIC MEETING MUNICIPAL SETTING DESIGNATION CITY OF HOUSTON

Virtual Meeting: Microsoft Teams Platform
Date - Time: April 1, 2021 - 6:00 PM

For meeting link and additional project information go to: <https://www.publicworks.houstontx.gov/msd-calendar>

Applicant: Mr. Roger Saa

Site Location: 6405 Antoine Drive, Houston, TX 77091

Legal Description: TR 5A-5, ABST 346 A G HOLLAND

Contaminants of Concern: tetrachloroethene, trichloroethene, cis-1,2-dichloroethene, and vinyl chloride.

This designates an area in which the use of impaired groundwater is prohibited for use as potable water (i.e. drinking, cooking, bathing etc.). If you have questions or comments, please contact the City of Houston MSD Program at (832) 394-9003 or email at msd@houstontx.gov.

NOTICE OF PUBLIC MEETING MUNICIPAL SETTING DESIGNATION CITY OF HOUSTON

Virtual Meeting: Microsoft Teams Platform
Date - Time: March 29, 2021 - 6:00 PM

For meeting link and additional project information go to: <https://www.publicworks.houstontx.gov/msd-calendar>

Applicant: Exxon Mobil Corporation North Houston Fuels Terminal

Site Location: 8700 North Freeway, Houston, TX 77037

Legal Description: TR 1A, (RES A PER PLAT), EXXON NORTH TERMINAL, ABST 1295 A C ALLEN

Contaminants of Concern: Benzene, TPH.

This designates an area in which the use of impaired groundwater is prohibited for use as potable water (i.e. drinking, cooking, bathing etc.). If you have questions or comments, please contact the City of Houston MSD Program at (832) 394-9003 or email at msd@houstontx.gov.

Legal Bids & Proposals

Galena Park Independent School District (GPISD) is requesting Competitive Sealed Proposals (CSP 21-200) for **Woodland Acres Middle School HVAC Replacement at 12947 Myrtle Lane, Houston, TX 77015 (Project #043-2020)**. Proposals are due on **Tuesday, March 23, 2021 at 2:00 CST** in the main lobby of the GPISD Administration Building, 14705 Woodforest Blvd., Houston, TX 77015, and at **3:00 pm CST** proposals for listed Alternates are due at the same location at which time and place the Proposals will be opened publicly and read aloud. A Proposal Security in the amount of ten percent (10%) of the proposal amount is required.

The scope of work consists of HVAC system replacement, to include new chillers, pumps, boilers, and air handlers. Demolition of existing chilled water storage tank and foundation and regrading of affected site. Complete replacement of the Building Automation System and existing chilled/hot water control valves. Updates to the fire alarm system to accommodate HVAC equipment replacement and syncing of all existing strobes. A pre-proposal conference will be held at **Galena Park ISD Administration Building, on Thursday, March 4, 2021 at 10:00 am CST**. Attendance is highly recommended.

Contract Documents will be available on February 22, 2021 at Stanton Engineering Group, LLC, 1300 W. Sam Houston Pkwy S., Suite 121, Houston, TX 77042, (713) 300-9292, for a \$200.00 refundable deposit. Proposers may also obtain additional documents, at their cost, from Triangle Reproductions, Inc., 8450 Westpark, #100, Houston, TX 77063.

NOTICE TO PROPOSERS: Request for Subcontractor Proposals for Modular Buildings at Pyburn Elementary School Galena Park ISD Project # 109.1-2017

Purcell Construction, Inc., as Construction Manager at Risk on behalf of Galena Park Independent School District will receive subcontractor/vendor proposals for the Modular Buildings at Pyburn Elementary School designed by S. Chu Architects.

Proposals and qualification statements will be received by Purcell Construction, Inc., from interested proposers, sub-proposers and suppliers until 2:00 PM on Wednesday, March 10, 2021, in the presence of the Owner and Architect at the offices of Purcell Construction, Inc. at 277 Dennis Street, Humble, Texas 77388, Phone: 281.548.1000 and Fax: 281.548.2998, email: bids@purcellc.com; Construction Manager Contact: Carter Ullrich.

Drawings and Specifications will be available for review on February 17, 2021 at the offices of Purcell Construction, Inc., and at the plan rooms of AGC, Dodge Data & Analytics, Virtual Builders Exchange, Construction Data and CMD Group. Prevailing wage rates in conformance with Texas law will be paid on this project. All proposals shall remain valid for sixty (60) days.

The Owner, Architect/Engineer and Construction Manager reserve the right to reject any and all proposals, to waive any informalities and irregularities in the proposal process, and to make the awards in the best interest of the school district. By submitting a proposal, each proposer agrees to waive any claim it has or may have against the Owner, the Architect/Engineer, Construction Manager and their respective employees arising out of or in connection with the administration, evaluation, or recommendation of any proposal; waiver of any requirements under the Proposal Documents, or the Contract Documents; acceptance or rejection of any proposals; and award of a Contract.

A virtual Pre-proposal conference will be held via Zoom.us on Tuesday, March 2, 2021 at 10:00 AM. Contractors are strongly encouraged to attend the pre-proposal conference.

NOTICE TO BIDDERS

The Metropolitan Transit Authority of Harris County, Texas (METRO) is planning to issue the procurement documents listed in this advertisement. **IFB No. 4021000099: Polycarbonate Panels for Bus Shelters.** Solicitation will be available on or about 03/01/2020.

Prospective bidders/proposers can view and download these solicitations by visiting METRO's website at <https://webapps.ridemetro.org/procurement/solicitations.aspx>

If you are unable to download the documents or are having difficulty, please contact METRO Plan and Bid Room at (713) 739-4881.

Sealed Proposal Solicitation #RA05-21 Houston-Galveston Area Council Cooperative Purchasing Program Radio Communications/Emergency Response Equipment

Pre-Proposal Conference: 3/4/21 @ 9am
Response Deadline: 4/15/21 @ 1pm
Public Opening: 4/15/21 @ 2pm
3555 Timmons Lane, Houston, TX, TX
Per ADA, reasonable accommodation provided with 24 hour prior notice.
713-993-2417 or www.hgacbuy.org for info.

Notice to Creditors

LEGAL NOTICES & ANNIVERSARIES

Notice To Creditors Ad

\$74.00*

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713-224-6868
Ext. 6435 or 4204

*\$74.00 includes first 36 lines and 1 Affidavit of Publication

*\$1.92 per line over 36 lines

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HGACBUY - RADIO COMMUNICATIONS/EMERGENCY RESPONSE EQUIPMENT**Background**

The H-GAC Cooperative Purchasing Program (H-GACBuy) establishes contracts for a variety of products and services through competitive solicitations. Member governments are able to use the contracts to make purchases. HGACBuy received and opened twenty-one proposals for Radio Communications/Emergency Response Equipment on April 15, 2021. The following companies submitted a proposal:

Activu Corporation	Rockaway, NJ
All Points Communication, Inc. dba Advantage Communications	Kerrville, TX
BK Technologies, Inc.	West Melbourne, FL
DAMM Cellular Systems, Inc.	Broomfield, CO
E.F. Johnson Company	Irving, TX
Cloud Dock Solutions LLC dba First In Software	Cypress, TX
Freedom Communication Technologies, Inc.	Kilgore, TX
Icom America, Inc.	Kirkland, WA
IPKeys Power Partners, Inc.	Tinton Falls, NJ
JPS Interoperability Solutions, Inc.	Raleigh, NC
L3Harris Technologies, Inc.	Melbourne, FL
Microwave Networks, Inc.	Stafford, TX
Mobile Communications America, Inc.	Spartanburg, SC
Motorola Solutions, Inc.	Chicago, IL
Nokia of America Corporation dba Nokia Innovations US LLC	Murray Hill, NJ
Northwest Communications, Inc. dba NW Radio	Houston, TX
Power Products Unlimited LLC	Alpharetta, GA
PowerTrunk, Inc.	Jersey City, NJ
SIAE Microelettronica, Inc.	Rochester, NY
Tait North America, Inc. dba Tait Communications	Houston, TX
Zetron, Inc.*	Redmond, WA

*Joint Bid

Current Situation

This contract is a continuation of an existing contract in our portfolio, consisting of various types of radio communications/emergency response equipment. Northwest Communications did not receive an award because their response did not meet the minimum threshold score. All proposals have been evaluated by H-GAC staff. Twenty are being recommended for award. Request authorization to negotiate contracts with each respondent listed in the Award Recommendation Table, and as may be applicable, to extend contract assignments to other authorized entities during the contract period.

Funding Source: Participating local government purchases
Budgeted: NA

Action Requested

Request authorization to negotiate contracts with the respondent listed in the Contract Award Recommendation Table for Radio Communications/Emergency Response Equipment.

H-GAC Product Categories**A:** Radio Communication Equipment**B:** Emergency Response Command and Control Equipment**C:** Mobile Command Interoperable Communication Equipment**D:** Services**RA05-21 Award Recommendation Table**

Proposal	Product Category
Activu Corporation	WB
All Points Communication, Inc. dba Advantage Communications	AP, XD
BK Technologies, Inc.	XA
DAMM Cellular Systems, Inc.	XA
E.F. Johnson Company	FD, NA
Cloud Dock Solutions LLC dba First In Software	HA, HB
Freedom Communication Technologies, Inc.	XA
Icom America, Inc.	JA
IPKeys Power Partners, Inc.	D
JPS Interoperability Solutions, Inc.	MC
L3Harris Technologies, Inc.	GA
Microwave Networks, Inc.	OA
Mobile Communications America, Inc.	XC, PA, BA, XD, AA, XA
Motorola Solutions, Inc.	PA, PB, PC PD
Nokia of America Corporation dba Nokia Innovations US LLC	AA, AD
Power Products Unlimited LLC	XA
PowerTrunk, Inc.	XA, SA, XD
SIAE Microelettronica, Inc.	XA
Tait North America, Inc. dba Tait Communications	TA, TD
Zetron, Inc. Huffman Communications Sales, Inc.	VA, VD

**EXHIBIT B
INSURANCE REQUIREMENTS**

Exhibit B:
Insurance Requirements for IT Professional Services

IT Contractor shall procure and maintain for the duration of the contract insurance against claims for security breaches, system failures, injuries to persons, damages to software, or damages to property (including computer equipment) which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees. Contractor shall procure and maintain for the duration of the contract insurance claims arising out of their services and including, but not limited to loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data.

SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits of **\$2,000,000** per occurrence and \$4,000,000 aggregate.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with a combined single limit **\$1,000,000** each accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of **\$1,000,000** per accident for bodily injury, disease, disease-policy limit.
(Not required if contractor provides written verification it has no employees)

Technology Professional Liability/Errors and Omissions Insurance appropriate to the Contractor's profession and work hereunder, with limits of **\$2,000,000** per claim and aggregate. Coverage shall be sufficiently broad to respond to the professional duties and obligations as is undertaken by the Contractor in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses, alteration of, loss of, or destruction of electronic data and/or information "property" of the Agency in the care, custody, or control of the Contractor.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of Stockton, its officers, officials, employees, and volunteers are to be included as additional insureds as their interest may appear on the CGL policy with respect to liability arising out of work or operations performed by the Contractor including materials, parts, or equipment furnished in connection with such work or operations.

General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used). Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.

Primary Coverage

For any claims related to this contract, the **Contractor's insurance coverage shall be primary and non-contributory**. Coverage for commercial liability shall be at least as broad as ISO CG 20 01 04 13 as respects the City of Stockton, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess policies. The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to the sole negligence of the Named Insured.

Umbrella or Excess Policy

The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

Notice of Cancellation

Upon receipt of notice from its insurer(s) the Contractor shall provide the City of Stockton with thirty (30) days' prior written notice of cancellation of any required coverage.

Waiver of Subrogation

Contractor hereby grants to City of Stockton a waiver of any right to subrogation which

any insurer of said Contractor may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to the City of Stockton.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least three (3) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not ***replaced with another claims-made policy form with a Retroactive Date*** prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of contract work.

Verification of Coverage

Contractor shall furnish the City of Stockton with original certificates and applicable endorsements. All certificates and endorsements are to be received and approved by the City of Stockton before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City of Stockton is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Certificate Holder Address

The address for mailing certificates, endorsements and notices shall be:

City of Stockton
Its Officers, Officials, Employees and Volunteers
400 E Main Street, 3rd Floor – HR
Stockton, CA 95202

H-GAC Communications System and Services Agreement

Motorola Solutions, Inc. (“Motorola”) and City of Stockton (“Customer”) enter into this “Agreement,” pursuant to which Customer will purchase and Motorola will sell the System and Services, as described below. Motorola and Customer may be referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, the Customer desires to purchase a Communications System; and

WHEREAS, Motorola desires to sell a Communications System to Customer; and

WHEREAS, Houston-Galveston Area Council (“H-GAC”), acting as the agent for various local governmental entities who are “End Users” under interlocal agreements (including the Customer) has solicited proposals for communications equipment and conducted discussions with Motorola concerning its proposal and, where applicable, in accordance with the competitive procurement procedures of Texas law; and

WHEREAS, H-GAC and Motorola entered into that certain Contract No. RA05-21 executed on September 28, 2021, (the “H-GAC Contract”), which provided that End Users may purchase communications and related equipment and services from Motorola pursuant to certain terms contained therein; and

WHEREAS, pursuant to Special Provisions, Articles 2 and 6 of the H-GAC Contract, Motorola and Customer now wish to enter into this Agreement to delineate the specific terms of the purchase of communications and related equipment and services from Motorola by the Customer. For good and valuable consideration, the Parties agree as follows:

Section 1 ATTACHMENTS

1.1. EXHIBITS. The Exhibits listed below are exhibits related to the System sale and implementation. These Exhibits are incorporated into and made a part of this Agreement.

Exhibit A “Motorola Software License Agreement”

Exhibit B “Payment”

Exhibit C Technical and Implementation Documents

C-1 “System Description” dated _____

C-2 “Pricing Summary & Equipment List” dated _____

C-3 “Implementation Statement of Work” dated _____

C-4 “Acceptance Test Plan” or “ATP” dated _____

C-5 “Performance Schedule” dated _____

Exhibit D “System Acceptance Certificate”

Exhibit E H-GAC Contract No. RA05-21

1.2. ADDENDUM (ADDENDA). Customer may elect to purchase professional or subscription services in addition to the System and related services. Any such services will be governed by the terms in the main body of the Agreement and an applicable Addendum containing terms specific to such service. Such Addenda will be labeled with the name of the service being purchased.

1.3 ORDER OF PRECEDENCE. In interpreting this Agreement and resolving any ambiguities: 1) the main body of this Agreement takes precedence over the exhibits (unless otherwise specified in an exhibit), and any inconsistency between Exhibits A through E will be resolved in their listed order, except that Exhibit E shall prevail over this entire Agreement in the event of a conflict, and 2) The applicable service Addendum will take precedence over the main body of the Agreement and the Exhibits.

Section 2 DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

“Acceptance Tests” means those tests described in the Acceptance Test Plan.

“Addendum (Addenda)” is the title of the document(s) containing a specific set of terms and conditions applicable to a particular service or other offering beyond the Communication System and System implementation services. The terms in the Addendum are applicable only to the specific service or offering described therein.

“Administrative User Credentials” means an account that has total access over the operating system, files, end user accounts and passwords at either the System level or box level. Customer’s personnel with access to the Administrative User Credentials may be referred to as the Administrative User.

“Beneficial Use” means when Customer first uses the System or a Subsystem for operational purposes (excluding training or testing).

“Confidential Information” means all information consistent with the fulfillment of this Agreement that is (i) disclosed under this Agreement in oral, written, graphic, machine recognizable, and/or sample form, being clearly designated, labeled or marked as confidential or its equivalent or (ii) obtained by examination, testing or analysis of any hardware, software or any component part thereof provided by discloser to recipient. The nature and existence of this Agreement are considered Confidential Information. Confidential Information that is disclosed orally must be identified as confidential at the time of disclosure and confirmed by the discloser by submitting a written document to the recipient within thirty (30) days after such disclosure. The written document must contain a summary of the Confidential Information disclosed with enough specificity for identification purpose and must be labeled or marked as confidential or its equivalent.

“Contract Price” means the price for the System and implementation Services, including the H-GAC administrative fee, but excluding applicable sales or similar taxes and freight charges. Further, unless otherwise stated in Exhibit B, “Payment” or the pricing pages of the proposal, recurring fees for maintenance, SUA, or subscription services are not included in the Contract Price.

“Deliverables” means all written information (such as reports, specifications, designs, plans, drawings, analytics, Solution Data, or other technical or business information) that Motorola prepares for Customer in the performance of the Services and is obligated to provide to Customer under this Agreement. The Deliverables, if any, are more fully described in the Statement of Work.

“Derivative Proprietary Materials” means derivatives of the Proprietary Materials that Motorola may from time to time, including during the course of providing the Services, develop and/or use and/or to which Motorola provides Customer access.

“Effective Date” means that date upon which the last Party executes this Agreement.

“Equipment” means the hardware components of the Solution that Customer purchases from Motorola under this Agreement. Equipment that is part of the System is described in the Equipment List.

“Feedback” means comments or information, in oral or written form, given to Motorola by Customer in connection with or relating to Equipment or Services, during the term of this Agreement.

“Force Majeure” means an event, circumstance, or act that is beyond a Party’s reasonable control, such as an act of God, an act of the public enemy, an act of a government entity, strikes, other labor disturbances, supplier performance, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war,

riots, or any other similar cause.

“Motorola Software” means software that Motorola or its affiliated companies owns.

“Non-Motorola Software” means software that a party other than Motorola or its affiliated companies owns.

“Open Source Software” (also called “freeware” or “shareware”) means software with either freely obtainable source code, license for modification, or permission for free distribution.

“Proprietary Materials” means certain software tools and/or other technical materials, including, but not limited to, data, modules, components, designs, utilities, subsets, objects, program listings, models, methodologies, programs, systems, analysis frameworks, leading practices and specifications which Motorola has developed prior to, or independently from, the provision of the Services and/or which Motorola licenses from third parties.

“Proprietary Rights” means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by Motorola under this Agreement and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Motorola or another party.

“Services” means system implementation, maintenance, support, subscription, or other professional services provided under this Agreement, which may be further described in the applicable Addendum and/or SOW.

“Software” (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by Motorola; and (iii) may contain one or more items of software owned by a third party supplier. The term "Software" does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

“Software License Agreement” means the Motorola Software License Agreement (Exhibit A).

“Software Support Policy” (“SwSP”) means the policy set forth at https://www.motorolasolutions.com/content/dam/msi/secure/services/software_policy.pdf describing the specific technical support that will be provided to Customers under the Warranty Period and during any paid maintenance support period for Motorola Software. This policy may be modified from time to time at Motorola’s discretion.

“Solution” means the combination of the System(s) and Services provided by Motorola under this Agreement.

“Solution Data” means Customer data that is transformed, altered, processed, aggregated, correlated or operated on by Motorola, its vendors or other data sources and data that has been manipulated or retrieved using Motorola know-how to produce value-added content to data consumers, including customers or citizens which is made available to Customer with the Solution and Services.

“Specifications” means the functionality and performance requirements that are described in the Technical and Implementation Documents.

“SUA” or “SUA II” means Motorola’s Software Upgrade Agreement program.

“Subsystem” means a major part of the System that performs specific functions or operations.

Subsystems are described in the Technical and Implementation Documents.

“System” means the Equipment, including incidental hardware and materials, Software, and design, installation and implementation services that are combined together into an integrated system; the System(s) is (are) described in the Technical and Implementation Documents.

“System Acceptance” means the Acceptance Tests have been successfully completed.

“System Data” means data created by, in connection with or in relation to Equipment or the performance of Services under this Agreement.

“Warranty Period” for System Hardware, Software, or services related to system implementation means one (1) year from the date of System Acceptance or Beneficial Use, whichever occurs first. Unless otherwise stated in the applicable Addendum, Warranty Period for other Services means ninety (90) days from performance of the Service.

Section 3 SCOPE OF AGREEMENT AND TERM

3.1. **SCOPE OF WORK.** Motorola will provide, install and test the System(s), and perform its other contractual responsibilities to provide the Solution, all in accordance with this Agreement. Customer will perform its contractual responsibilities in accordance with this Agreement.

3.2. **CHANGE ORDERS.** Either Party may request changes within the general scope of this Agreement. If a requested change causes an increase or decrease in the cost or time required to perform this Agreement, the Parties will agree to an equitable adjustment of the Contract Price or applicable subscription fees, Performance Schedule, or both, and will reflect the adjustment in a change order or Addendum. Neither Party is obligated to perform requested changes unless both Parties execute a written change order.

3.3. **TERM.** Unless terminated in accordance with other provisions of this Agreement or extended by mutual agreement of the Parties, the term of this Agreement begins on the Effective Date and continues until the date of Final Project Acceptance or expiration of the Warranty Period, or completion of the Services, whichever occurs last. The term and the effective date of recurring Services will be set forth in the applicable Addendum.

3.4. **ADDITIONAL EQUIPMENT OR SOFTWARE.** For three (3) years after the expiration date of the Agreement, Customer may order additional Equipment or Software, if it is then available. Each purchase order must refer to this Agreement, the expiration date of the Agreement, and must specify the pricing and delivery terms. The Parties agree that, notwithstanding expiration of the Agreement, the applicable provisions of this Agreement (except for pricing, delivery, passage of title and risk of loss to Equipment, warranty commencement, and payment terms) will govern the purchase and sale of the additional Equipment or Software. Additional or contrary terms in the purchase order will be inapplicable, unless signed by both parties. Title and risk of loss to additional Equipment will pass at shipment, warranty will commence upon delivery, and payment is due within thirty (30) days after the invoice date. Motorola will send Customer an invoice as the additional Equipment is shipped or Software is licensed. Alternatively, Customer may register with and place orders through the Motorola Solutions Customer Portal eCommerce Shop, and this Agreement will be the “Underlying Agreement” for those eCommerce transactions rather than the eCommerce Shop Terms and Conditions of Sale. eCommerce Shop registration and other information may be found at https://www.motorolasolutions.com/en_us/registration and the shop support telephone number is (800) 814-0601.

3.5. **MOTOROLA SOFTWARE.** Any Motorola Software, including subsequent releases, is licensed to Customer solely in accordance with the Software License Agreement. Customer hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

3.6. **NON-MOTOROLA SOFTWARE.** Any Non-Motorola Software is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor's rights and protections under the Software License Agreement. Motorola makes no representations or warranties of any kind regarding Non-Motorola Software. Non-Motorola Software may include Open Source Software.

3.7. **SUBSTITUTIONS.** At no additional cost to Customer, Motorola may substitute any Equipment, Software, or services to be provided by Motorola, if the substitute meets or exceeds the Specifications and is of equivalent or better quality to the Customer. Any substitution will be reflected in a change order.

3.8. **OPTIONAL EQUIPMENT OR SOFTWARE.** This paragraph applies only if a "Priced Options" exhibit is shown in Section 1, or if the parties amend this Agreement to add a Priced Options exhibit. During the term of the option as stated in the Priced Options exhibit (or if no term is stated, then for one (1) year after the Effective Date), Customer has the right and option to purchase the equipment, software, and related services that are described in the Priced Options exhibit. Customer may exercise this option by giving written notice to Seller which must designate what equipment, software, and related services Customer is selecting (including quantities, if applicable). To the extent they apply, the terms and conditions of this Agreement will govern the transaction; however, the parties acknowledge that certain provisions must be agreed upon, and they agree to negotiate those in good faith promptly after Customer delivers the option exercise notice. Examples of provisions that may need to be negotiated are: specific lists of deliverables, statements of work, acceptance test plans, delivery and implementation schedules, payment terms, maintenance and support provisions, additions to or modifications of the Software License Agreement, hosting terms, and modifications to the acceptance and warranty provisions.

Section 4 SERVICES

4.1. If Customer desires and Motorola agrees to continue Services beyond the Term, Customer's issuance and Motorola's acceptance of a purchase order for Services will serve as an automatic extension of the Agreement for purposes of the continuing Services. Only the terms and conditions applicable to the performance of Services will apply to the extended Agreement.

4.2. During the Warranty Period, in addition to warranty services, Motorola will provide maintenance Services for the Equipment and support for the Motorola Software pursuant to the applicable maintenance and support Statements of Work. Support for the Motorola Software will be in accordance with Motorola's established Software Support Policy. Copies of the SwSP can be found at https://www.motorolasolutions.com/content/dam/msi/secure/services/software_policy.pdf and will be sent by mail, email or fax to Customer upon written request. Maintenance Services and support during the Warranty Period are included in the Contract Price. Unless already included in the Contract Price, if Customer wishes to purchase 1) additional maintenance or software support services during the Warranty Period; or 2) continue or expand maintenance, software support, installation, and/or SUA services after the Warranty Period, Motorola will provide the description of and pricing for such services in a separate proposal document. Unless otherwise agreed by the parties in writing, the terms and conditions in this Agreement applicable to maintenance, support, installation, and/or SUA Services, will be included in the Maintenance and Support Addendum, SUA Addendum, the applicable Statements of Work, and the proposal, (if applicable). These collective terms will govern the provision of such Services.

To obtain any such additional Services, Customer will issue a purchase order referring to this Agreement and the separate proposal document. Omission of reference to this Agreement in Customer's purchase order will not affect the applicability of this Agreement. Motorola's proposal may include a cover page entitled "Service Agreement" or "Installation Agreement", as applicable, and other attachments. These cover pages and other attachments are incorporated into this Agreement by this reference

4.3. **PROFESSIONAL AND SUBSCRIPTION SERVICES.** If Customer purchases professional or subscription Services as part of the Solution, additional or different terms specific to such Service will be included in the applicable Addendum and will apply to those Services. Customer may purchase additional professional or subscription services by issuing a purchase order referencing this Agreement and Motorola's proposal for such additional services.

4.4. Any information in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer in providing Services under this Agreement or Motorola data viewed, accessed, will remain Motorola's property, will be deemed proprietary, Confidential Information. This Confidential Information will be promptly returned at Motorola's request.

4.5. **TOOLS.** All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of providing Services under this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to this property, and return it to Motorola upon request. This property will be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction. Upon termination of the contract for any reason, Customer shall return to Motorola all equipment delivered to Customer.

4.6. **COVENANT NOT TO EMPLOY.** During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering Services under this Agreement. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law.

4.7. **CUSTOMER OBLIGATIONS.** If the applicable Statement of Work or Addendum contains assumptions that affect the Services or Deliverables, Customer will verify that they are accurate and complete. Any information that Customer provides to Motorola concerning the Services or Deliverables will be accurate and complete in all material respects. Customer will make timely decisions and obtain any required management approvals that are reasonably necessary for Motorola to perform the Services and its other duties under this Agreement. Unless the Statement of Work states the contrary, Motorola may rely upon and is not required to evaluate, confirm, reject, modify, or provide advice concerning any assumptions and Customer-provided information, decisions and approvals described in this paragraph.

4.8. **ASSUMPTIONS.** If any assumptions or conditions contained in this Agreement, applicable Addenda or Statements of Work prove to be incorrect or if Customer's obligations are not performed, Motorola's ability to perform under this Agreement may be impacted and changes to the Contract Price, subscription fees, project schedule, Deliverables, or other changes may be necessary.

4.9. **NON-PRECLUSION.** If, as a result of the Services performed under this Agreement, Motorola recommends that Customer purchase products or other services, nothing in this Agreement precludes Motorola from participating in a future competitive bidding process or otherwise offering or selling the recommended products or other services to Customer. Customer represents that this paragraph does not violate its procurement or other laws, regulations, or policies.

4.10. **PROPRIETARY MATERIALS.** Customer acknowledges that Motorola may use and/or provide Customer with access to Proprietary Materials and Derivative Proprietary Materials. The Proprietary Materials and the Derivative Proprietary Materials are the sole and exclusive property of Motorola and Motorola retains all right, title and interest in and to the Proprietary Materials and Derivative Proprietary Materials.

4.11. **ADDITIONAL SERVICES.** Any services performed by Motorola outside the scope of this Agreement at the direction of Customer will be considered to be additional Services which are subject to additional charges. Any agreement to perform additional Services will be reflected in a written and executed change order, Addendum or amendment to this Agreement.

Section 5 PERFORMANCE SCHEDULE

The Parties will perform their respective responsibilities in accordance with the Performance Schedule. By executing this Agreement, Customer authorizes Motorola to proceed with contract performance.

Section 6 CONTRACT PRICE, PAYMENT AND INVOICING

6.1. Customer affirms that a purchase order or notice to proceed is not required for contract performance or for subsequent years of service, if any, and that sufficient funds have been appropriated in accordance with applicable law. The Customer will pay all invoices as received from Motorola and any changes in scope will be subject to the change order process as described in this Agreement. At the time of execution of this Agreement, the Customer will provide all necessary reference information to include on invoices for payment in accordance with this Agreement.

6.2. **CONTRACT PRICE.** The Contract Price in U.S. dollars is \$ 99,000, which includes the H-GAC administrative fee. Motorola will pay H-GAC's administrative fee in accordance with the payment terms of the Motorola/H-GAC Contract No. RA05-21. If applicable, a pricing summary is included with the Payment schedule in Exhibit B. Motorola has priced the Services, Software, and Equipment as an integrated System. A change in Software or Equipment quantities, or Services, may affect the overall Contract Price, including discounts if applicable. Fees for professional, SUA, and/or subscription services which are not included in the Contract Price may be listed in Exhibit B, the pricing pages of the proposal, or the applicable Addendum.

6.3. **INVOICING AND PAYMENT.** Motorola will submit invoices to Customer according to the Payment schedule in Exhibit B. Invoices will be mailed or emailed to Customer pursuant to Section 6.5, Invoicing and Shipping Addresses. Except for a payment that is due on the Effective Date, Customer will make payments to Motorola within thirty (30) days after the date of each invoice. Customer will make payments when due in the form of a wire transfer, check, or cashier's check from a U.S. financial institution. Overdue invoices will bear simple interest at the maximum allowable rate. For reference, the Federal Tax Identification Number for Motorola is 36-1115800.

6.4. **FREIGHT, TITLE, AND RISK OF LOSS.** Motorola will pre-pay and add all freight charges to the invoices. Title and risk of loss to the Equipment will pass to Customer upon shipment. Title to Software will not pass to Customer at any time. Motorola will pack and ship all Equipment in accordance with good commercial practices.

6.5. **INVOICING AND SHIPPING ADDRESSES.** Invoices will be sent to the Customer at the following address:

Name: City of Stockton
 Address: 400 E Main Street, Stockton CA 95202
 Phone: (209) 937-8254

E-INVOICE. To receive invoices via email:

Customer Account Number: _____
 Customer Accounts Payable Email: ITinvoices@STOCKTONCA.GOV
 Customer CC(optional) Email: Terrell.Harper@STOCKTONCA.GOV

The address which is the ultimate destination where the Equipment will be delivered to Customer is:

Name: City of Stockton
 Address: 400 E Main Street, Stockton CA 95202

The Equipment will be shipped to the Customer at the following address (insert if this information is known):

Name: City of Stockton, IT Department

Address: 400 E Main Street, Stockton CA 95202

Phone: (209) 937-8254

Customer may change this information by giving written notice to Motorola.

Section 7 SITES AND SITE CONDITIONS

7.1. ACCESS TO SITES. In addition to its responsibilities described elsewhere in this Agreement, Customer will provide a designated project manager; all necessary construction and building permits, zoning variances, licenses, and any other approvals that are necessary to develop or use the sites and mounting locations; and access to the worksites or vehicles identified in the Technical and Implementation Documents as reasonably requested by Motorola so that it may perform its duties in accordance with the Performance Schedule and Statement of Work. If the Statement of Work so indicates, Motorola may assist Customer in the local building permit process.

7.2. SITE CONDITIONS. Customer will ensure that all work sites it provides will be safe, secure, and in compliance with all applicable industry and OSHA standards. To the extent applicable and unless the Statement of Work states to the contrary, Customer will ensure that these work sites have adequate: physical space; air conditioning and other environmental conditions; adequate and appropriate electrical power outlets, distribution, equipment and connections; and adequate telephone or other communication lines (including modem access and adequate interfacing networking capabilities), all for the installation, use and maintenance of the System. Before installing the Equipment or Software at a work site, Motorola may inspect the work site and advise Customer of any apparent deficiencies or non-conformities with the requirements of this Section. This Agreement is predicated upon normal soil conditions as defined by the version of E.I.A. standard RS-222 in effect on the Effective Date.

7.3. SITE ISSUES. If a Party determines that the sites identified in the Technical and Implementation Documents are no longer available or desired, or if subsurface, structural, adverse environmental or latent conditions at any site differ from those indicated in the Technical and Implementation Documents, the Parties will promptly investigate the conditions and will select replacement sites or adjust the installation plans and specifications as necessary. If change in sites or adjustment to the installation plans and specifications causes a change in the cost or time to perform, the Parties will equitably amend the Contract Price, Performance Schedule, or both, by a change order.

Section 8 TRAINING

Any training to be provided by Motorola to Customer will be described in the applicable Statement of Work. Customer will notify Motorola immediately if a date change for a scheduled training program is required. If Motorola incurs additional costs because Customer reschedules a training program less than thirty (30) days before its scheduled start date, Motorola may recover these additional costs.

Section 9 SYSTEM ACCEPTANCE

9.1. COMMENCEMENT OF ACCEPTANCE TESTING. Motorola will provide to Customer at least ten (10) days notice before the Acceptance Tests commence. System testing will occur only in accordance with the Acceptance Test Plan.

9.2. SYSTEM ACCEPTANCE. System Acceptance will occur upon successful completion of the Acceptance Tests. Upon System Acceptance, the Parties will memorialize this event by promptly executing a System Acceptance Certificate. If the Acceptance Test Plan includes separate tests for individual Subsystems or phases of the System, acceptance of the individual Subsystem or phase will

occur upon the successful completion of the Acceptance Tests for the Subsystem or phase, and the Parties will promptly execute an acceptance certificate for the Subsystem or phase. If Customer believes the System has failed the completed Acceptance Tests, Customer will provide to Motorola a written notice that includes the specific details of the failure. If Customer does not provide to Motorola a failure notice within thirty (30) days after completion of the Acceptance Tests, System Acceptance will be deemed to have occurred as of the completion of the Acceptance Tests. Minor omissions or variances in the System that do not materially impair the operation of the System as a whole will not postpone System Acceptance or Subsystem acceptance, but will be corrected according to a mutually agreed schedule.

9.3. BENEFICIAL USE. Customer acknowledges that Motorola's ability to perform its implementation and testing responsibilities may be impeded if Customer begins using the System before System Acceptance. Therefore, Customer will not commence Beneficial Use before System Acceptance without Motorola's prior written authorization, which will not be unreasonably withheld. Motorola is not responsible for System performance deficiencies that occur during unauthorized Beneficial Use. Upon commencement of Beneficial Use, Customer assumes responsibility for the use and operation of the System.

9.4. FINAL PROJECT ACCEPTANCE. Final Project Acceptance will occur after System Acceptance when all deliverables and other work have been completed. When Final Project Acceptance occurs, the parties will promptly memorialize this final event by so indicating on the System Acceptance Certificate.

Section 10 REPRESENTATIONS AND WARRANTIES

10.1. SYSTEM FUNCTIONALITY. Motorola represents that the System will perform in accordance with the Specifications in all material respects. Upon System Acceptance or Beneficial Use, whichever occurs first, this System functionality representation is fulfilled. Motorola is not responsible for System performance deficiencies that are caused by ancillary equipment not furnished by Motorola which is attached to or used in connection with the System or for reasons or parties beyond Motorola's control, such as natural causes; the construction of a building that adversely affects the microwave path reliability or radio frequency (RF) coverage; the addition of frequencies at System sites that cause RF interference or intermodulation; or Customer changes to load usage or configuration outside the Specifications.

10.2. EQUIPMENT WARRANTY. During the Warranty Period, Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship. If System Acceptance is delayed beyond six (6) months after shipment of the Equipment by events or causes beyond Motorola's control, this warranty expires eighteen (18) months after the shipment of the Equipment.

10.3. SOFTWARE WARRANTY. Except as described in the SwSP and unless otherwise stated in the Software License Agreement, during the Warranty Period, Motorola warrants the Software in accordance with the warranty terms set forth in the Software License Agreement and the provisions of this Section that are applicable to the Software. If System Acceptance is delayed beyond six (6) months after shipment of the Motorola Software by events or causes beyond Motorola's control, this warranty expires eighteen (18) months after the shipment of the Motorola Software. **Nothing in this Warranty provision is intended to conflict or modify the Software Support Policy. In the event of an ambiguity or conflict between the Software Warranty and Software Support Policy, the Software Support Policy governs.**

10.4. EXCLUSIONS TO EQUIPMENT AND SOFTWARE WARRANTIES. These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Software in other than its normal, customary, and authorized manner; accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Motorola; Customer's failure to comply with all applicable industry and OSHA standards; (ii) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (iii) Equipment that has had the serial number removed or made illegible; (iv) batteries (because they carry

their own separate limited warranty) or consumables; (v) freight costs to ship Equipment to the repair depot; (vi) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (vii) normal or customary wear and tear.

10.5. **SERVICE WARRANTY.** During the Warranty Period, Motorola warrants that the Services will be provided in a good and workmanlike manner and will conform in all material respects to the applicable Statement of Work. Services will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. Customer acknowledges that the Deliverables may contain recommendations, suggestions or advice from Motorola to Customer (collectively, "recommendations"). Motorola makes no warranties concerning those recommendations, and Customer alone accepts responsibility for choosing whether and how to implement the recommendations and the results to be realized from implementing them.

10.6. **WARRANTY CLAIMS.** To assert a warranty claim, Customer must notify Motorola in writing of the claim before the expiration of the Warranty Period. Upon receipt of this notice, Motorola will investigate the warranty claim. If this investigation confirms a valid Equipment or Software warranty claim, Motorola will (at its option and at no additional charge to Customer) repair the defective Equipment or Motorola Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or Motorola Software. These actions will be the full extent of Motorola's liability for the warranty claim. In the event of a valid Services warranty claim, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. If this investigation indicates the warranty claim is not valid, then Motorola may invoice Customer for responding to the claim on a time and materials basis using Motorola's then current labor rates. Repaired or replaced product is warranted for the balance of the original applicable warranty period. All replaced products or parts will become the property of Motorola.

10.7. **ORIGINAL END USER IS COVERED.** These express limited warranties are extended by Motorola to the original user purchasing the System or Services for commercial, industrial, or governmental use only, and are not assignable or transferable.

10.8. **DISCLAIMER OF OTHER WARRANTIES.** THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND MOTOROLA SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

Section 11 DELAYS

11.1. **FORCE MAJEURE.** Neither Party will be liable for its non-performance or delayed performance if caused by a Force Majeure. A Party that becomes aware of a Force Majeure that will significantly delay performance will notify the other Party promptly (but in no event later than fifteen days) after it discovers the Force Majeure. If a Force Majeure occurs, the Parties will execute a change order to extend the Performance Schedule or applicable Addenda for a time period that is reasonable under the circumstances.

11.2. **PERFORMANCE SCHEDULE DELAYS CAUSED BY CUSTOMER.** If Customer (including its other contractors) delays the Performance Schedule, it will make the promised payments according to the Payment schedule as if no delay occurred; and the Parties will execute a change order to extend the Performance Schedule and, if requested, compensate Motorola for all reasonable charges incurred because of the delay. Delay charges may include costs incurred by Motorola or its subcontractors for additional freight, warehousing and handling of Equipment; extension of the warranties; travel; suspending and re-mobilizing the work; additional engineering, project management, and standby time calculated at then current rates; and preparing and implementing an alternative implementation plan.

Section 12 DISPUTES

The Parties will use the following procedure to address any dispute arising under this Agreement (a "Dispute").

12.1. **GOVERNING LAW.** This Agreement will be governed by and construed in accordance with the laws of the State in which the System is installed.

12.2. **NEGOTIATION.** Either Party may initiate the Dispute resolution procedures by sending a notice of Dispute ("Notice of Dispute"). The Parties will attempt to resolve the Dispute promptly through good faith negotiations including 1) timely escalation of the Dispute to executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for the matter and 2) direct communication between the executives. If the Dispute has not been resolved within ten (10) days from the Notice of Dispute, the Parties will proceed to mediation.

12.3. **MEDIATION.** The Parties will choose an independent mediator within thirty (30) days of a notice to mediate from either Party ("Notice of Mediation"). Neither Party may unreasonably withhold consent to the selection of a mediator. If the Parties are unable to agree upon a mediator, either Party may request that American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the mediation in good faith and will be represented at the mediation by a business executive with authority to settle the Dispute.

12.4. **LITIGATION, VENUE and JURISDICTION.** If a Dispute remains unresolved for sixty (60) days after receipt of the Notice of Mediation, either Party may then submit the Dispute to a court of competent jurisdiction in the state in which the System is installed. Each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts in such state over any claim or matter arising under or in connection with this Agreement.

12.5. **CONFIDENTIALITY.** All communications pursuant to subsections 12.2 and 12.3 will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections provided by applicable law. The use of these Dispute resolution procedures will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either Party.

Section 13 DEFAULT AND TERMINATION

13.1. **DEFAULT BY A PARTY.** If either Party fails to perform a material obligation under this Agreement, the other Party may consider the non-performing Party to be in default (unless a Force Majeure causes the failure) and may assert a default claim by giving the non-performing Party a written and detailed notice of default. Except for a default by Customer for failing to pay any amount when due under this Agreement which must be cured immediately, the defaulting Party will have thirty (30) days after receipt of the notice of default to either cure the default or, if the default is not curable within thirty (30) days, provide a written cure plan. The defaulting Party will begin implementing the cure plan immediately after receipt of notice by the other Party that it approves the plan. If Customer is the defaulting Party, Motorola may stop work on the project until it approves the Customer's cure plan.

13.2. **FAILURE TO CURE.** If a defaulting Party fails to cure the default as provided above in Section 13.1, unless otherwise agreed in writing, the non-defaulting Party may terminate any unfulfilled portion of this Agreement. In the event of termination for default, the defaulting Party will promptly return to the non-defaulting Party any of its Confidential Information. If Customer is the non-defaulting Party, terminates this Agreement as permitted by this Section, and completes the System through a third Party, Customer may as its exclusive remedy recover from Motorola reasonable costs incurred to complete the System to a capability not exceeding that specified in this Agreement less the unpaid portion of the Contract Price. Customer will mitigate damages and provide Motorola with detailed invoices substantiating the charges.

In the event Customer elects to terminate this Agreement for any reason other than default, Customer shall pay Motorola for the conforming Equipment and/or Software delivered and all services performed.

Section 14 INDEMNIFICATION

14.1. GENERAL INDEMNITY BY Motorola. Motorola will indemnify and hold Customer harmless from any and all liability, expense, judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against Customer to the extent it is caused by the negligence of Motorola, its subcontractors, or their employees or agents, while performing their duties under this Agreement, if Customer gives Motorola prompt, written notice of any claim or suit. Customer will cooperate with Motorola in its defense or settlement of the claim or suit. This Section sets forth the full extent of Motorola's general indemnification of Customer from liabilities that are in any way related to Motorola's performance under this Agreement.

14.2. GENERAL INDEMNITY BY CUSTOMER. Customer will indemnify and hold Motorola harmless from any and all liability, expense, judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against Motorola to the extent it is caused by the negligence of Customer, its other contractors, or their employees or agents, while performing their duties under this Agreement, if Motorola gives Customer prompt, written notice of any the claim or suit. Motorola will cooperate with Customer in its defense or settlement of the claim or suit. This Section sets forth the full extent of Customer's general indemnification of Motorola from liabilities that are in any way related to Customer's performance under this Agreement.

14.3. PATENT AND COPYRIGHT INFRINGEMENT.

14.3.1. Motorola will defend at its expense any suit brought against Customer to the extent it is based on a third-party claim alleging that the Equipment manufactured by Motorola or the Motorola Software ("Motorola Product") directly infringes a United States patent or copyright ("Infringement Claim"). Motorola's duties to defend and indemnify are conditioned upon: Customer promptly notifying Motorola in writing of the Infringement Claim; Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and Customer providing to Motorola cooperation and, if requested by Motorola, reasonable assistance in the defense of the Infringement Claim. In addition to Motorola's obligation to defend, and subject to the same conditions, Motorola will pay all damages finally awarded against Customer by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Motorola in settlement of an Infringement Claim.

14.3.2 If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense: (a) procure for Customer the right to continue using the Motorola Product; (b) replace or modify the Motorola Product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the Motorola Product and grant Customer a credit for the Motorola Product, less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards.

14.3.3 Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Motorola Product with any software, apparatus or device not furnished by Motorola; (b) the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the Motorola Product; (c) Motorola Product designed or manufactured in accordance with Customer's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a modification of the Motorola Product by a party other than Motorola; (e) use of the Motorola Product in a manner for which the Motorola Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Customer to install an enhancement release to the Motorola Software that is intended to correct the claimed infringement. In no event will Motorola's liability resulting from its indemnity obligation to Customer extend in any way to royalties payable on a per use basis or the Customer's revenues, or any royalty basis other than a reasonable royalty based upon revenue derived

by Motorola from Customer from sales or license of the infringing Motorola Product.

14.3.4. This Section 14 provides Customer's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim. Customer has no right to recover and Motorola has no obligation to provide any other or further remedies, whether under another provision of this Agreement or any other legal theory or principle, in connection with an Infringement Claim. In addition, the rights and remedies provided in this Section 14 are subject to and limited by the restrictions set forth in Section 15.

Section 15 LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of the Equipment, Software, or implementation and other one-time Services with respect to which losses or damages are claimed. With respect to all subscription or other ongoing Services and unless as otherwise provided under the applicable Addenda, Motorola's total liability will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Services preceding the incident giving rise to the claim. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS, INCONVENIENCE, LOSS OF USE, LOSS TIME, DATA, GOODWILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT.** This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account.

Section 16 CONFIDENTIALITY AND PROPRIETARY RIGHTS

16.1. CONFIDENTIAL INFORMATION.

16.1.1. Each party is a disclosing party ("Discloser") and a receiving party ("Recipient") under this Agreement. All Deliverables will be deemed to be Motorola's Confidential Information. During the term of this Agreement and for a period of three (3) years from the expiration or termination of this Agreement, Recipient will (i) not disclose Confidential Information to any third party; (ii) restrict disclosure of Confidential Information to only those employees (including, but not limited to, employees of any wholly owned subsidiary, a parent company, any other wholly owned subsidiaries of the same parent company), agents or consultants who must be directly involved with the Confidential Information for the purpose and who are bound by confidentiality terms substantially similar to those in this Agreement; (iii) not copy, reproduce, reverse engineer, decompile, or disassemble any Confidential Information; (iv) use the same degree of care as for its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of Confidential Information; (v) promptly notify Discloser upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Agreement; and (vi) only use the Confidential Information as needed to fulfill this Agreement.

16.1.2. Recipient is not obligated to maintain as confidential, Confidential Information that Recipient can demonstrate by documentation (i) is now available or becomes available to the public without breach of this agreement; (ii) is explicitly approved for release by written authorization of Discloser; (iii) is lawfully obtained from a third party or parties without a duty of confidentiality; (iv) is known to the Recipient prior to such disclosure; or (v) is independently developed by Recipient without the use of any of Discloser's Confidential Information or any breach of this Agreement.

16.1.3. All Confidential Information remains the property of the Discloser and will not be copied or reproduced without the express written permission of the Discloser, except for copies that are absolutely necessary in order to fulfill this Agreement. Within ten (10) days of receipt of Discloser's written request, Recipient will return all Confidential Information to Discloser along with all copies and portions thereof, or certify in writing that all such Confidential Information has been destroyed. However, Recipient may retain one (1) archival copy of the Confidential Information that it may use only in case of a dispute concerning this Agreement. No license, express or implied, in the Confidential Information is granted other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. The Discloser warrants that it is authorized to disclose any Confidential Information it discloses pursuant to this Agreement.

16.2. **PRESERVATION OF MOTOROLA'S PROPRIETARY RIGHTS.** Motorola, the third party manufacturer of any Equipment, and the copyright owner of any Non-Motorola Software own and retain all of their respective Proprietary Rights in the Equipment and Software, and nothing in this Agreement is intended to restrict their Proprietary Rights. All intellectual property developed, originated, or prepared by Motorola in connection with providing to Customer the Equipment, Software, or related services remain vested exclusively in Motorola, and this Agreement does not grant to Customer any shared development rights of intellectual property. Except as explicitly provided in the Software License Agreement, Motorola does not grant to Customer, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. Customer will not modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, distribute, sublicense, sell or export the Software, or permit or encourage any third party to do so. The preceding sentence does not apply to Open Source Software which is governed by the standard license of the copyright owner.

16.3 **VOLUNTARY DISCLOSURE.** Except as required to fulfill its obligations under this Agreement, Motorola will have no obligation to provide Customer with access to its Confidential Information and/or proprietary information. Under no circumstances will Motorola be required to provide any data related to cost and pricing.

16.4 **DATA AND FEEDBACK.**

16.4.1 To the extent permitted by law, Customer owns all right, title and interest in System Data created solely by it or its agents (hereafter, "Customer Data"), and grants to Motorola the right to use, host, cache, store, reproduce, copy, modify, combine, analyze, create derivatives from, communicate, transmit, publish, display, and distribute such Customer Data.

16.4.2 Motorola owns all right, title and interest in data resulting from System Data that is or has been transformed, altered, processed, aggregated, correlated or operated on (hereafter, "Derivative Data").

16.4.3 Any Feedback given by Customer is and will be entirely voluntary and, even if designated as confidential, will not create any confidentiality obligation for Motorola. Motorola will be free to use, reproduce, license or otherwise distribute and exploit the Feedback without any obligation to Customer. Customer acknowledges that Motorola's receipt of the Feedback does not imply or create recognition by Motorola of either the novelty or originality of any idea. The parties further agree that all fixes, modifications and improvements made to Motorola products or services conceived of or made by Motorola that are based, either in whole or in part, on the Feedback are the exclusive property of Motorola and all right, title and interest in and to such fixes, modifications or improvements to the Motorola product or service will vest solely in Motorola.

Section 17 GENERAL

17.1. **TAXES.** The Contract Price does not include any excise, sales, lease, use, property, or other taxes, assessments or duties, all of which will be paid by Customer except as exempt by law. If Motorola

is required to pay any of these taxes, Motorola will send an invoice to Customer and Customer will pay to Motorola the amount of the taxes (including any interest and penalties) within thirty (30) days after the date of the invoice. Customer will be solely responsible for reporting the Equipment for personal property tax purposes, and Motorola will be solely responsible for reporting taxes on its income or net worth.

17.2. **ASSIGNABILITY AND SUBCONTRACTING.** Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. In addition, in the event Motorola separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

17.3. **WAIVER.** Failure or delay by either Party to exercise a right or power under this Agreement will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the waiving Party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

17.4. **SEVERABILITY.** If a court of competent jurisdiction renders any part of this Agreement invalid or unenforceable, that part will be severed and the remainder of this Agreement will continue in full force and effect.

17.5. **INDEPENDENT CONTRACTORS.** Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.

17.6. **HEADINGS AND SECTION REFERENCES.** The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

17.7. **NOTICES.** Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address provided by the other Party by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and will be effective upon receipt.

17.8. **COMPLIANCE WITH APPLICABLE LAWS.** Each Party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the System. Customer will obtain and comply with all Federal Communications Commission ("FCC") licenses and authorizations required for the installation, operation and use of the System before the scheduled

installation of the Equipment. Although Motorola might assist Customer in the preparation of its FCC license applications, neither Motorola nor any of its employees is an agent or representative of Customer in FCC or other matters.

17.9 FUTURE REGULATORY REQUIREMENTS. The Parties acknowledge and agree that this is an evolving technological area and therefore, laws and regulations regarding Services and use of Solution may change. Changes to existing Services or the Solution required to achieve regulatory compliance may be available for an additional fee. Any required changes may also impact the price for Services.

17.10. AUTHORITY TO EXECUTE AGREEMENT. Each Party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the Parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.

17.11. ADMINISTRATOR LEVEL ACCOUNT ACCESS. If applicable to the type of System purchased by Customer, Motorola will provide Customer with Administrative User Credentials. Customer agrees to only grant access to the Administrative User Credentials to those personnel with the training and experience to correctly use them. Customer is responsible for protecting Administrative User Credentials from disclosure and maintaining Credential validity by, among other things, updating passwords when required. Customer may be asked to provide valid Administrative User Credentials when in contact with Motorola System support personnel. Customer understands that changes made as the Administrative User can significantly impact the performance of the System. Customer agrees that it will be solely responsible for any negative impact on the System or its users by any such changes. System issues occurring as a result of changes made using the Administrative User Credentials may impact Motorola's ability to perform Services or other obligations under the Agreement. In such cases, a revision to the appropriate provisions of the Agreement, including the Statement of Work, may be necessary. To the extent Motorola provides assistance to correct any issues caused by or arising out of the use of or failure to maintain Administrative User Credentials, Motorola will be entitled to bill Customer and Customer will pay Motorola on a time and materials basis for resolving the issue.

17.12. SURVIVAL OF TERMS. The following provisions will survive the expiration or termination of this Agreement for any reason: Section 3.5 (Motorola Software); Section 3.6 (Non-Motorola Software); if any payment obligations exist, Sections 6.2 and 6.3 (Contract Price and Invoicing and Payment); Subsection 10.8 (Disclaimer of Implied Warranties); Section 12 (Disputes); Section 15 (Limitation of Liability); and Section 16 (Confidentiality and Proprietary Rights); and all of the General provisions in Section 17.

17.13. ENTIRE AGREEMENT. This Agreement, including all Exhibits, constitutes the entire agreement of the Parties regarding the subject matter of the Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be executed in multiple counterparts, and shall have the same legal force and effect as if the Parties had executed it as a single document. The Parties may sign in writing, or by electronic signature, including by email. An electronic signature, or a facsimile copy or computer image, such as a PDF or tiff image, of a signature, shall be treated as and shall have the same effect as an original signature. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document. This Agreement may be amended or modified only by a written instrument signed by authorized

representatives of both Parties. The preprinted terms and conditions found on any Customer purchase or purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each Party signs that document.

The Parties hereby enter into this Agreement as of the Effective Date.

Motorola Solutions, Inc.

Customer

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A**MOTOROLA SOFTWARE LICENSE AGREEMENT**

This Exhibit A Motorola Software License Agreement ("Agreement") is between Motorola Solutions, Inc., ("Motorola"), and City of Stockton ("Licensee").

For good and valuable consideration, the parties agree as follows:

Section 1 DEFINITIONS

1.1 "Designated Products" means products provided by Motorola to Licensee with which or for which the Software and Documentation is licensed for use.

1.2 "Documentation" means product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided).

1.3 "Open Source Software" means software with either freely obtainable source code, license for modification, or permission for free distribution.

1.4 "Open Source Software License" means the terms or conditions under which the Open Source Software is licensed.

1.5 "Primary Agreement" means the agreement to which this exhibit is attached.

1.6 "Security Vulnerability" means a flaw or weakness in system security procedures, design, implementation, or internal controls that could be exercised (accidentally triggered or intentionally exploited) and result in a security breach such that data is compromised, manipulated or stolen or the system damaged.

1.7 "Software" (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by Motorola; and (iii) may contain one or more items of software owned by a third party supplier. The term "Software" does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

Section 2 SCOPE

Motorola and Licensee enter into this Agreement in connection with Motorola's delivery of certain proprietary software or products containing embedded or pre-loaded proprietary software, or both. This Agreement contains the terms and conditions of the license Motorola is providing to Licensee, and Licensee's use of the proprietary software and affiliated documentation.

Section 3 GRANT OF LICENSE

3.1. Subject to the provisions of this Agreement and the payment of applicable license fees, Motorola grants to Licensee a personal, limited, non-transferable (except as permitted in Section 7) and non-exclusive license under Motorola's copyrights and Confidential Information (as defined in the Primary Agreement) embodied in the Software to use the Software, in object code form, and the Documentation solely in connection with Licensee's use of the Designated Products. This Agreement does not grant any rights to source code.

3.2. If the Software licensed under this Agreement contains or is derived from Open Source Software, the terms and conditions governing the use of such Open Source Software are in the Open Source Software Licenses of the copyright owner and not this Agreement. If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of the Open Source Software Licenses governing Licensee's use of the Open Source Software, the terms and conditions of the license grant of the applicable Open Source Software Licenses will take precedence over the license grants in this Agreement. If requested by Licensee, Motorola will use commercially reasonable efforts to: (i) determine whether any Open Source Software is provided under this Agreement; and (ii) identify the Open Source Software (or specify where that license may be found).

3.3 TO THE EXTENT, IF ANY, THAT THERE IS A SEPARATE LICENSE AGREEMENT PACKAGED WITH, OR PROVIDED ELECTRONICALLY WITH, A PARTICULAR PRODUCT THAT BECOMES EFFECTIVE ON AN ACT OF ACCEPTANCE BY THE END USER, THEN THAT AGREEMENT SUPERSEDES THE SOFTWARE LICENSE AGREEMENT AS TO THE END USER OF EACH SUCH PRODUCT.

Section 4 LIMITATIONS ON USE

4.1. Licensee may use the Software only for Licensee's internal business purposes and only in accordance with the Documentation. Any other use of the Software is strictly prohibited. Without limiting the general nature of these restrictions, Licensee will not make the Software available for use by third parties on a "time sharing," "application service provider," or "service bureau" basis or for any other similar commercial rental or sharing arrangement.

4.2. Licensee will not, and will not allow or enable any third party to: (i) reverse engineer, disassemble, peel components, decompile, reprogram or otherwise reduce the Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (ii) modify, adapt, create derivative works of, or merge the Software; (iii) copy, reproduce, distribute, lend, or lease the Software or Documentation to any third party, grant any sublicense or other rights in the Software or Documentation to any third party, or take any action that would cause the Software or Documentation to be placed in the public domain; (iv) remove, or in any way alter or obscure, any copyright notice or other notice of Motorola's proprietary rights; (v) provide, copy, transmit, disclose, divulge or make the Software or Documentation available to, or permit the use of the Software by any third party or on any machine except as expressly authorized by this Agreement; or (vi) use, or permit the use of, the Software in a manner that would result in the production of a copy of the Software solely by activating a machine containing the Software. Licensee may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; *provided* that Licensee may not operate that copy of the Software at the same time as the original Software is being operated. Licensee may make as many copies of the Documentation as it may reasonably require for the internal use of the Software.

4.3. Unless otherwise authorized by Motorola in writing, Licensee will not, and will not enable or allow any third party to: (i) install a licensed copy of the Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Software installed in one unit of a Designated Product onto one other device. Licensee may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Licensee provides written notice to Motorola of the temporary transfer and identifies the device on which the Software is transferred. Temporary transfer of the Software to another device must be discontinued when the original Designated Product is returned to operation and the Software must be removed from the other device. Licensee must provide prompt written notice to Motorola at the time temporary transfer is discontinued.

4.4 Licensee will maintain, during the term of this Agreement and for a period of two years thereafter, accurate records relating to this license grant to verify compliance with this Agreement. Motorola or an independent third party ("Auditor") may inspect Licensee's premises, books and records, upon reasonable prior notice to Licensee, during Licensee's normal business hours and subject to Licensee's facility and

security regulations. Motorola is responsible for the payment of all expenses and costs of the Auditor. Any information obtained by Motorola and the Auditor will be kept in strict confidence by Motorola and the Auditor and used solely for the purpose of verifying Licensee's compliance with the terms of this Agreement.

Section 5 OWNERSHIP AND TITLE

Motorola, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the Software and Documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Software and Documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, emulations to or derivative works from the Software or Documentation, whether made by Motorola or another party, or any improvements that result from Motorola's processes or, provision of information services). No rights are granted to Licensee under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this Agreement. All intellectual property developed, originated, or prepared by Motorola in connection with providing the Software, Designated Products, Documentation or related services, remains vested exclusively in Motorola, and Licensee will not have any shared development or other intellectual property rights.

Section 6 LIMITED WARRANTY; DISCLAIMER OF WARRANTY

6.1. Unless otherwise stated in the Primary Agreement, the commencement date and the term of the Software warranty will be a period of ninety (90) days from Motorola's shipment of the Software (the "Warranty Period"). If Licensee is not in breach of any of its obligations under this Agreement, Motorola warrants that the unmodified Software, when used properly and in accordance with the Documentation and this Agreement, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the Software. Whether a defect occurs will be determined by Motorola solely with reference to the Documentation. Motorola does not warrant that Licensee's use of the Software or the Designated Products will be uninterrupted, error-free, completely free of Security Vulnerabilities, or that the Software or the Designated Products will meet Licensee's particular requirements. Motorola makes no representations or warranties with respect to any third party software included in the Software. Notwithstanding, any warranty provided by a copyright owner in its standard license terms will flow through to Licensee for third party software provided by Motorola.

6.2 Motorola's sole obligation to Licensee and Licensee's exclusive remedy under this warranty is to use reasonable efforts to remedy any material Software defect covered by this warranty. These efforts will involve either replacing the media or attempting to correct significant, demonstrable program or documentation errors or Security Vulnerabilities. If Motorola cannot correct the defect within a reasonable time, then at Motorola's option, Motorola will replace the defective Software with functionally-equivalent Software, license to Licensee substitute Software which will accomplish the same objective, or terminate the license and refund the Licensee's paid license fee.

6.3. Warranty claims are described in the Primary Agreement.

6.4. The express warranties set forth in this Section 6 are in lieu of, and Motorola disclaims, any and all other warranties (express or implied, oral or written) with respect to the Software or Documentation, including, without limitation, any and all implied warranties of condition, title, non-infringement, merchantability, or fitness for a particular purpose or use by Licensee (whether or not Motorola knows, has reason to know, has been advised, or is otherwise aware of any such purpose or use), whether arising by law, by reason of custom or usage of trade, or by course of dealing. In addition, Motorola disclaims any warranty to any person other than Licensee with respect to the Software or Documentation.

Section 7 TRANSFERS

Licensee will not transfer the Software or Documentation to any third party without Motorola's prior written consent. Motorola's consent may be withheld at its discretion and may be conditioned upon transferee paying all applicable license fees and agreeing to be bound by this Agreement. If the Designated Products are Motorola's radio products and Licensee transfers ownership of the Motorola radio products to a third party, Licensee may assign its right to use the Software (other than CPS and Motorola's FLASHport® software) which is embedded in or furnished for use with the radio products and the related Documentation; *provided* that Licensee transfers all copies of the Software and Documentation to the transferee, and Licensee and the transferee sign a transfer form to be provided by Motorola upon request, obligating the transferee to be bound by this Agreement.

Section 8 TERM AND TERMINATION

8.1 Licensee's right to use the Software and Documentation will begin when the Primary Agreement is signed by both parties and will continue for the life of the Designated Products with which or for which the Software and Documentation have been provided by Motorola, unless Licensee breaches this Agreement, in which case this Agreement and Licensee's right to use the Software and Documentation may be terminated immediately upon notice by Motorola.

8.2 Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to Motorola that all copies of the Software have been removed or deleted from the Designated Products and that all copies of the Software and Documentation have been returned to Motorola or destroyed by Licensee and are no longer in use by Licensee.

8.3 Licensee acknowledges that Motorola made a considerable investment of resources in the development, marketing, and distribution of the Software and Documentation and that Licensee's breach of this Agreement will result in irreparable harm to Motorola for which monetary damages would be inadequate. If Licensee breaches this Agreement, Motorola may terminate this Agreement and be entitled to all available remedies at law or in equity (including immediate injunctive relief and repossession of all non-embedded Software and associated Documentation unless Licensee is a Federal agency of the United States Government).

Section 9 Commercial Computer Software

9.1 *This Section 9 only applies to U.S. Government end users.* The Software, Documentation and updates are commercial items as that term is defined at 48 C.F.R. Part 2.101, consisting of "commercial computer software" and "computer software documentation" as such terms are defined in 48 C.F.R. Part 252.227-7014(a)(1) and 48 C.F.R. Part 252.227-7014(a)(5), and used in 48 C.F.R. Part 12.212 and 48 C.F.R. Part 227.7202, as applicable. Consistent with 48 C.F.R. Part 12.212, 48 C.F.R. Part 252.227-7015, 48 C.F.R. Part 227.7202-1 through 227.7202-4, 48 C.F.R. Part 52.227-19, and other relevant sections of the Code of Federal Regulations, as applicable, the Software, Documentation and Updates are distributed and licensed to U.S. Government end users: (i) only as commercial items, and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions contained herein.

9.2 If Licensee is licensing Software for end use by the United States Government or a United States Government agency, Licensee may transfer such Software license, but only if: (i) Licensee transfers all copies of such Software and Documentation to such United States Government entity or interim transferee, and (ii) Licensee has first obtained from the transferee (if applicable) and ultimate end user an enforceable end user license agreement containing restrictions substantially identical to the ones contained in this Agreement. Except as stated in the foregoing, Licensee and any transferee(s) authorized by this subsection 9.2 may not otherwise use or transfer or make available any Motorola software to any third party nor permit any party to do so.

Section 10 CONFIDENTIALITY

Licensee acknowledges that the Software and Documentation contain Motorola's valuable proprietary and Confidential Information and are Motorola's trade secrets, and that the provisions in the Primary Agreement concerning Confidential Information apply.

Section 11 LIMITATION OF LIABILITY

The Limitation of Liability provision is described in the Primary Agreement.

Section 12 NOTICES

Notices are described in the Primary Agreement.

Section 13 GENERAL

13.1. COPYRIGHT NOTICES. The existence of a copyright notice on the Software will not be construed as an admission or presumption of publication of the Software or public disclosure of any trade secrets associated with the Software.

13.2. COMPLIANCE WITH LAWS. Licensee acknowledges that the Software is subject to the laws and regulations of the United States and Licensee will comply with all applicable laws and regulations, including export laws and regulations of the United States. Licensee will not, without the prior authorization of Motorola and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any item or technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the United States Government or any of its agencies at the time of the action, requires an export license or other governmental approval. Violation of this provision is a material breach of this Agreement.

13.3 FUTURE REGULATORY REQUIREMENTS. The Parties acknowledge and agree that this is an evolving technological area and therefore, laws and regulations regarding Services and use of Solution may change. Changes to existing Services or the Solution required to achieve regulatory compliance may be available for an additional fee. Any required changes may also impact the price for Services.

13.4. ASSIGNMENTS AND SUBCONTRACTING. Motorola may assign its rights or subcontract its obligations under this Agreement, or encumber or sell its rights in any Software, without prior notice to or consent of Licensee.

13.5. GOVERNING LAW. This Agreement is governed by the laws of the United States to the extent that they apply and otherwise by the internal substantive laws of the State to which the Software is shipped if Licensee is a sovereign government entity, or the internal substantive laws of the State of Illinois if Licensee is not a sovereign government entity. The terms of the U.N. Convention on Contracts for the International Sale of Goods do not apply. In the event that the Uniform Computer Information Transaction Act, any version of this Act, or a substantially similar law (collectively "UCITA") becomes applicable to a party's performance under this Agreement, UCITA does not govern any aspect of this Agreement or any license granted under this Agreement, or any of the parties' rights or obligations under this Agreement. The governing law will be that in effect prior to the applicability of UCITA.

13.6. THIRD PARTY BENEFICIARIES. This Agreement is entered into solely for the benefit of

Motorola and Licensee. No third party has the right to make any claim or assert any right under this Agreement, and no third party is deemed a beneficiary of this Agreement. Notwithstanding the foregoing, any licensor or supplier of third party software included in the Software will be a direct and intended third party beneficiary of this Agreement.

13.7. SURVIVAL. Sections 4, 5, 6.4, 7, 8, 9, 10, 11 and 13 survive the termination of this Agreement.

13.8. ORDER OF PRECEDENCE. In the event of inconsistencies between this Exhibit and the Primary Agreement, the parties agree that this Exhibit prevails, only with respect to the specific subject matter of this Exhibit, and not the Primary Agreement or any other exhibit as it applies to any other subject matter.

13.9. SECURITY. Motorola uses reasonable means in the design and writing of its own Software and the acquisition of third party Software to limit Security Vulnerabilities. While no software can be guaranteed to be free from Security Vulnerabilities, if a Security Vulnerability is discovered, Motorola will take the steps set forth in Section 6 of this Agreement.

Exhibit B
PAYMENT

Except for a payment that is due on the Effective Date, Customer will make payments to Motorola within thirty (30) days after the date of each invoice. Customer will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a U.S. financial institution. If Customer has purchased additional Professional or Subscription services, payment will be in accordance with the applicable addenda. Payment for the System purchase will be in accordance with the following milestones.

System Purchase (excluding Subscribers, if applicable)

1. **25% of the Contract Price due upon contract execution (due upon effective date);**
2. **60% of the Contract Price due upon shipment of equipment from Staging;**
3. **10% of the Contract Price due upon installation of equipment; and**
4. **5% of the Contract Price due upon Final Acceptance.**

If Subscribers are purchased, 100% of the Subscriber Contract Price will be invoiced upon shipment (as shipped).

Motorola shall make partial shipments of equipment and will request payment upon shipment of such equipment. In addition, Motorola shall invoice for installations completed on a site-by-site basis or when professional services are completed, when applicable. The value of the equipment shipped/services performed will be determined by the value shipped/services performed as a percentage of the total milestone value. Unless otherwise specified, contract discounts are based upon all items proposed and overall system package. For invoicing purposes only, discounts will be applied proportionately to the FNE and Subscriber equipment values to total contract price. Overdue invoices will bear simple interest at the maximum allowable rate by state law.

For Lifecycle Support Plan and Subscription Based Services:

Motorola will invoice Customer annually in advance of each year of the plan.

The chart below outlines the hourly labor rates for Motorola System Integration resources to be used. The staffing requirements shall be multiplied by the appropriate rate per resource in the table below. The hourly labor rates are fully burdened. The hourly rates per resource type and level are listed in Table 1.

	Resource Types			
Levels	Project Management	System Engineering	System Technologist	Project Administration
4	\$ 290.00	\$ 300.00	\$ 280.00	\$ 200.00
3	\$ 240.00	\$ 250.00	\$ 240.00	\$ 180.00
2	\$ 220.00	\$ 220.00	\$ 220.00	\$ 170.00
1	\$ 190.00	\$ 210.00	\$ 210.00	\$ 160.00

Table 1 - Hourly Rates

These rates apply to ordinary days and times (Monday to Friday during the hours 8am to 5pm). Additional surcharges may apply to work done outside these timeframes. The minimum charge for any resource will be 4 hours. Travel expenses are not included in these rates and may be charged separately. The qualifications of each type and level of resource are defined in the tables found at

<https://www.motorolasolutions.com/content/dam/msi/secure/services/labor-rates-exhibit-160408.pdf>. All Motorola System Integration personnel assigned to this project will be classified according these levels. Project Administrative roles are varied and their specific duties and qualifications will be determined by the complexity and requirements of each project.

EXHIBIT D

System Acceptance Certificate

Customer Name: _____

Project Name: _____

This System Acceptance Certificate memorializes the occurrence of System Acceptance. Motorola and Customer acknowledge that:

- 1. The Acceptance Tests set forth in the Acceptance Test Plan have been successfully completed.
- 2. The System is accepted.

Customer Representative:

Motorola Representative:

Signature: _____
 Print Name: _____
 Title: _____
 Date: _____

Signature: _____
 Print Name: _____
 Title: _____
 Date: _____

FINAL PROJECT ACCEPTANCE:

Motorola has provided and Customer has received all deliverables, and Motorola has performed all other work required for Final Project Acceptance.

Customer Representative:

Motorola Representative:

Signature: _____
 Print Name: _____
 Title: _____
 Date: _____

Signature: _____
 Print Name: _____
 Title: _____
 Date: _____

Exhibit E

H-GAC Contract No. RA05-21