



CITY OF HOUSTON INVITATION TO BID

Issued: April 21, 2023

Bid Opening:

Sealed bids, in duplicate, will be received by the City Secretary of the City of Houston, in the City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002, until **10:30 A.M. Thursday, June 01, 2023** bids will be opened and publicly read in the City Council Chamber, City Hall Annex, Public Level, 900 Bagby at 11:00 a.m. on that date for the purchase of:

**NIGHT VISION BINOCULARS
HOUSTON POLICE DEPARTMENT
BID INVITATION NO. S87-N32755
NIGP: 625-13, 680-65, 680-87 AND MWBE GOAL 0%**

BUYER

Coryie Gilmore is the buyer for this solicitation and any questions regarding this solicitation should be submitted via e-mail to coryie.cook@houstontx.gov.

ELECTRONIC BIDDING

The technical specifications and any other information for this solicitation may be viewed and downloaded from <http://purchasing.houstontx.gov>. By registering and downloading this solicitation document, all updates to this solicitation document will be automatically forwarded via e-mail to any registered bidder. To submit an electronic bid for the items in this procurement, you must enter information in the required fields of the e-bid document through the "PLACE BID" icon which allows the registered bidder to print, sign, and submit the original sealed bid to the address referenced above. Please reference the solicitation name and bid invitation number on all correspondence.

Pre-Bid Conference:

The City of Houston's Strategic Procurement Division has decided to suspend ALL onsite Pre-Bid Conferences until further notices. Therefore, there will be a teleconference for this Pre-Bid on **May 11, 2023 at 10:00 A.M.** The dial in number is **1-936-755-1521 - Conference ID: 457692201#**. It is the bidder's responsibility to ensure that they have secured and thoroughly reviewed all aspects of the bidding documents prior to the Pre-Bid Conference.

Any revisions to be incorporated into this solicitation document arising from discussions before, during and subsequent to the pre-bid conference will be confirmed in writing by Letter(s) of Clarification prior to the bid due date. Verbal responses will not otherwise alter the specifications, terms and conditions as stated herein.

Additional Information and Specification Changes

Requests for additional information and questions should be addressed no later than **May 18, 2023, at 4:00 P.M. CST.** The City of Houston (the City) shall provide a written response to all questions received in writing before the solicitation due date. Questions received from all Bidder(s) shall be answered and sent to all Bidder(s) who are listed as having obtained the ITB.

Important Notice about the City's Early Payment Discount Program

The City's standard payment term is to pay 30 days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Tx. Gov't Code, Ch. 2251). However, the City may pay in less than 30 days, at its option, in return for an early payment discount from Contractor.

FEDERAL FUNDING

Federal funds may be utilized for some, or all of the items described in this ITB. The successful Contractor will be required to comply with all laws and regulations associated with these funds. Please see the exhibits to this document for additional details.

Bidding forms, specifications and all necessary information should be downloaded from the Internet at <http://purchasing.houstontx.gov>. By registering and downloading this bid document, all updates to this bid document will be automatically forwarded via e-mail to any registered bidder.

The place of the bid opening may be transferred in accordance with Paragraph Section 15-45 of The Code of Ordinances, Houston, Texas. The bid opening meeting may be rescheduled in accordance with Paragraph (c) of said Section 15-45.

The City reserves the right to reject any or all bids or to accept any bid or combination of bids deemed advantageous to it.

CITY EMPLOYEES ARE PROHIBITED FROM BIDDING ON THIS SOLICITATION IN ACCORDANCE WITH THE CODE OF ORDINANCES SECTION 15 - 1.

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SECTION A
OFFICIAL BID FORM

COMPETITION INTENDED:

It is the City of Houston's intent that this Invitation to Bid (ITB) permits competition. It shall be the bidder's responsibility to advise the Buyer in writing if any language, requirement, specifications, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in the ITB to a single source. Such notification must be received by the Buyer no later than seven (7) days prior to the date set for bids to open.

TEXAS PUBLIC INFORMATION ACT

All information submitted to the City is subject to the provisions of the Texas Public Information Act (TPIA), located in [Chapter 552 of the Texas Government Code](#). Proposers may mark any information submitted, including their financial information, as confidential, trade secret, proprietary, or any other designation of choice. The City will notify any proposer should their information be requested under the TPIA and proposers will have an opportunity to assert their own arguments to the Texas Attorney General as to why their information should be excepted from public disclosure.

PROTEST:

A protest shall comply with and be resolved according to the City of Houston Protest Administrative Policy 5-12 and rules adopted thereunder. For more information, go to: <http://www.houstontx.gov/adminpolicies/5-12.pdf>.

NO CONTACT PERIOD:

Neither bidder(s) nor any person acting on bidder(s)'s behalf shall attempt to influence the outcome of the award by the offer, presentation or promise of gratuities, favors, or anything of value to any appointed or elected official or employee of the City, their families or staff members. All inquiries regarding the solicitation are to be directed to the designated City Representative identified on the first page of the solicitation. Upon issuance of the solicitation through the pre-award phase and up to the date the City Secretary publicly posts notice of any City Council agenda containing the applicable award, aside from bidder's formal response to the solicitation, through the pre-award phase, written requests for clarification during the period officially designated for such purpose by the City Representative, neither bidder(s) nor persons acting on their behalf shall communicate with any appointed or elected official or employee of the City of Houston, their families or staff through written or oral means in an attempt to persuade or influence the outcome of the award or to obtain or deliver information intended to or which could reasonably result in an advantage to any bidder. However, nothing in this paragraph shall prevent a bidder from making public statements to the City Council convened for a regularly scheduled session after the official selection has been made and placed on the City Council agenda for action, or to a City Council committee convened to discuss a recommendation regarding the solicitation.

ANTI-BOYCOTT OF ISRAEL

Bidder certifies that Bidder is not currently engaged in and agrees for the duration of this Award not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

ZERO TOLERANCE FOR HUMAN TRAFFICKING:

The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Purchase Order for all purposes. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of the issuance of a Purchase Order. Contractors shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Contractor or its subcontractors providing services or goods under this Purchase Order, if any, within 7 days of Contractor becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

SECTION A. OFFICIAL BID FORM FOR NIGHT VISION BINOCULARS, (CONTINUED):

LOBBYING AND OTHER FORMS OF INFLUENCE PROHIBITED:

Neither Bidder(s) nor any person acting on Bidder(s)'s behalf shall attempt to influence the outcome of the award by the offer, presentation or promise of gratuities, favors, or anything of value to any appointed or elected official or employee of the City of Houston, their families or staff members. All inquiries regarding the solicitation are to be directed to the designated City Buyer identified on the first page of the solicitation. Upon issuance of the solicitation through the pre-award phase and up to the award, aside from Bidder's formal response to the solicitation, communications publicly made during the official pre-bid conference, written requests for clarification during the period officially designated for such purpose by the City Buyer, neither Bidder(s) nor persons acting on their behalf shall communicate with any appointed or elected official or employee of the City of Houston, their families or staff through written or oral means in an attempt to persuade or influence the outcome of the award or to obtain or deliver information.

DEBARMENT AND SUSPENSION

By submitting a bid in response to this solicitation, Bidder certifies in accordance with Exhibit "H" that at the time of submission, Bidder is not on the Federal Government's list of suspended, ineligible, or debarred entities. In the event placement on the list between of Bidder's submission and time of award, the Bidder shall notify the Chief Procurement Officer. Failure to do so may result in default of the contract, if awarded.

STANDARD CITY CONTRACT

The winning bidder will be required to comply with all City of Houston Terms and Conditions (EXHIBIT No. 5) and all Federal Terms and Conditions (EXHIBIT No. 6) Respondent acknowledges that federal funds financial assistance may be used to fund this Agreement. Respondent will comply with all applicable Federal laws, regulations, executive orders, and requirements. Respondent shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances.

Contracts funded in whole or in part by federal funding (e.g. Public Assistance Grants) are also subject to the requirement to solicit minority businesses, women's business enterprises, and labor area surplus firms are used when possible, located at 2 C.F.R. § 200.321. The list of Labor surplus firms are provided at the Department of Labor's website at <https://doleta.gov/programs/lisa.cfm>.

Regulation 2 C.F.R. § 200.321 requires, where subcontracting is permitted, contractors to take the following affirmative steps:

- I. Solicitation Lists. The Contractor must place small and minority businesses and women's business enterprises on solicitation lists.
- II. Solicitations. The Contractor must assure that it solicits small and minority businesses and women's business enterprises whenever they are potential sources.
- III. Dividing Requirements. The Contractor must divide total requirements, *when economically feasible*, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises.
- IV. Delivery Schedules. The Contractor must establish delivery schedules, *where the requirement permits*, which encourage participation by small and minority businesses and women's business enterprises.
- V. Obtaining Assistance. The Contractor must use 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.

The Contractor must take these steps regardless of whether it has met the City's MWBE goal referenced above

COMPLIANCE WITH CERTAIN STATE LAW REQUIREMENTS

Anti-Boycott of Israel. Contractor certifies that Contractor is not currently engaged in and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

Anti-Boycott of Energy Companies. Contractor certifies that Contractor is not currently engaged in and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.

SECTION A. OFFICIAL BID FORM FOR NIGHT VISION BINOCULARS, (CONTINUED):

Anti-Boycott of Firearm Entities or Firearm Trade Associations. Contractor certifies that Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.

Certification of No Business with Foreign Terrorist Organizations. For purposes of Section 2252.152 of the Texas Government Code, Contractor certifies that, at the time of this Purchase Order neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code as a company known to have contracts with or provide supplies to a foreign terrorist organization.

PRESERVATION OF CONTRACTING INFORMATION

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this bid [or solicitation] and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.”

ADDITIONAL REQUIREMENTS

Bidding forms, specifications, and all necessary information should be downloaded from the Internet at the City’s Website <http://houstontx.gov/purchasing/index.html>.

Additional forms will be required if your bid is recommended for an award. Please use the link above to access the forms required at the time of request.

NOTE: IF BIDDER IS RECOMMENDED FOR AN AWARD, THE BUYER OF RECORD WILL REQUEST FORMS AT A LATER DATE.

In addition to the Electronic Bid Form and the Official Signature Page, the Forms listed in Table 1 **must be completed and submitted to the Office of the City Secretary on or before the date and time the bid is due.** When submitting bids via UPS/FedEx, etc. please label it with the name: Office of the City Secretary, City Hall Annex, Public Level Room P101, 900 Bagby, Houston, Texas 77002. IDENTIFY THE BID SUBMITTAL WITH THE ITB NO.:

SECTION B
GENERAL SPECIFICATIONS
PART I

1.0 Bidding:

- 1.1 Pricing for Specified Item(s):
 - 1.1.1 Bidders may bid on one or more of the specified items listed.
 - 1.1.2 Bids submitted must contain a unit price for the specified item(s). For any bid solicitation that contains a request for separate pricing of options for the specified item(s), pricing must be provided for both the specified item(s) and option(s) listed. If pricing is provided for only the listed option(s), the bid for that specified item will be deemed as non-responsive and will be rejected.
 - 1.1.3 The unit price for any specified item shall be defined as the price for the manufacturer's standard model, furnished complete with all standard equipment and factory installed accessories listed in the manufacturer's printed literature for the respective unit, and any additional equipment defined herein by the City of Houston that is to be included.
 - 1.1.4 In the official e-bid form, if the bidder does not intend to submit a bid for one or more of the specified items listed, bidder shall check the "No Bid" Box.
- 1.2 Pricing for Listed Option(s): (If Applicable)
 - 1.2.1 A unit price is required on every listed option for the specified item(s).
 - 1.2.2 If a bidder "no bids" any listed option for which bids are requested for a specified item and the option is available for the specified item(s) , the bid for that specified item will be deemed as non-responsive and will be rejected.
 - 1.2.3 In the official e-bid form, for any optional equipment requested, if the equipment that is requested is included as standard equipment by the manufacturer, or is offered by the bidder at no charge, the bidder shall check the "No Charge" Box, which will then indicate "\$0.00" in the Unit Price column.
- 1.3 The City may accept this bid offer by issuance of a Notice of Award Letter and/or a Purchase Order covering award of bid to the Contractor/Supplier at any time on or before the 120th day following the day the Official Bid Form is opened by the City. This offer shall be irrevocable for 120 days after bid opening or for 90 days after City Council awards the bid, whichever comes last, but this period may be extended by written agreement of the parties.
- 1.4 Prices quoted shall remain firm through delivery and shall not be subject to increases (or supplemented on Contractor/Supplier's invoice(s) for payment).
- 1.5 The City reserves the option, after bids are opened, to adjust the quantities listed on the City's Official Bid Form upward or downward, subject to the availability of funds, and/or make award by line item. Therefore, the City shall not be liable for any contractual agreements/obligations the Contractor/Supplier enters into based on the City purchasing all the quantities specified herein.
- 1.6 The City reserves the right to INCREASE quantities during the twelve-month period following the issuance of the first purchase order subject to agreement in writing by the Contractor/Supplier to honor the same bid price. During this period, purchase orders will be issued for these items as needed. It is emphasized that the City of Houston does not guarantee any quantities; rather, the quantities may vary depending upon the actual needs of the various city departments.

2.0 Award:

- 2.1 Award will be made on the basis of the low total bid price for the specified item(s) meeting all specifications referenced herein plus listed options, if any.

SECTION B - PART I: GENERAL SPECIFICATIONS FOR NIGHT VISION BINOCULARS, (Continued):

3.0 Applicable Specifications:

3.1 The applicable specifications are comprised of the "Instructions for Bidding and Terms & Conditions", "Official Bid Forms", the "General Specifications", the "Technical Equipment Specifications", the "General Terms and Conditions" and other specifications that may be included herewith and the purchase orders which refer to these specifications.

4.0 Units Bid:

4.1 The unit(s) bid shall be new, manufacturer's latest make and model in current production as offered to commercial trade and shall be furnished complete with all factory-installed standard equipment and accessories listed in the manufacturer's latest literature for the respective unit and any additional optional equipment as may be defined in the detailed Technical Specifications.

4.2 Contractor/Supplier, by affixing their signature on the Official City Bid Form, has offered to furnish the equipment as specified herein in accordance with these specifications and all provisions set forth in this bid document. As such, it is the Contractor/Supplier's responsibility to adhere to these specifications. **Any exceptions or conditions to the specifications set forth in the bid documents will deem the bid non-responsive, and the bid will be rejected.**

4.3 The unit(s) bid shall be in full and complete compliance with all applicable safety and pollution requirements and regulations in effect at the time of bid submittal. This includes but is not limited to standards established by the United States Department of Transportation, including the Federal Motor Vehicle Safety Standards (FMVSS), the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA), the Texas Department of Transportation and the Texas Commission on Environmental Quality (TCEQ).

4.4 **The City of Houston requires that the unit(s) bid be the lowest emission unit(s), i.e. Nitrogen Oxides (NOx) and Fine Particulate Matter (PM) without increasing Hydrocarbons (HC), available on the market for the specified equipment.** The emission standards established by the EPA shall be considered only as minimum standards. In the absence of EPA standards or if California Air Resources Board (CARB) standards provide lower emissions, CARB standards will be considered as the minimum if the specified unit and any required fuel is available to the City of Houston. **Federally regulated engines must be covered by an EPA-issued Certificate of Conformity certifying the engine to be in compliance with federal emission standards and the Contractor/Supplier shall provide the Certificate of Conformity with their bid or within three calendar days from the written request of the City.** EPA emission label must be affixed to the vehicle and/or engine and be readily visible.

4.5 The term "Heavy Duty", or "HD" as may be applied to these specifications shall be interpreted to mean that the item referred to shall exceed the usual quality, quantity or capacity of that supplied with standard production units and shall be able to withstand the unusual strain, exposure, wear and use to be expected in the intended service. Where specification requirements are given, they shall be considered minimum requirements unless otherwise indicated.

4.6 Throughout these specifications, compatibility is of the essence and any modification, accessory, device, material or type of construction, whether to existing or to the specified equipment, which may be necessary to incorporate the specified equipment into the existing equipment shall be considered to be a part of these specifications whether detailed by item or not.

4.7 Units provided shall not have any decal, plate, sign, stencil, stamping, molding, or marking of any type pertaining to advertisement other than trademarks, trade names, or model designation normally installed by the manufacturer on equipment delivered to the City of Houston. No accessory item furnished on equipment shall advertise the name of the Contractor/Supplier.

SECTION B - PART I: GENERAL SPECIFICATIONS FOR NIGHT VISION BINOCULARS, (Continued):

5.0 Technical Literature:

- 5.1 To evaluate the bids, the user department and the City purchasing staff may require product literature/specification sheets. Technical literature may be provided with the bid submittal but is not required. However, the City reserves the right to request and require literature and/or clarifications, as needed, after bid submittal.
- 5.2 If required, Bidder must submit a minimum of TWO (2) SETS of the requested catalogue information, descriptive literature specifications and/or (if applicable) engineering drawings that completely identify the items bid. Bidder(s) shall furnish the requested literature within seven (7) calendar days after the receipt of the City's written request. **FAILURE ON BIDDER'S PART TO FURNISH THE REQUESTED TECHNICAL DATA IN THE TIME LIMIT SPECIFIED MAY BE CAUSE FOR REJECTION OF THE BID.**

6.0 Warranty:

- 6.1 A minimum twelve (12) month manufacturer's warranty on both materials and workmanship shall be provided. Any and all documents necessary to effect warranty shall be properly applied for and submitted by the bidder. The Contractor/Supplier shall provide to the City a manufacturer's warranty which will be honored by any of the manufacturer's authorized dealers and a complete copy shall be provided at the time of delivery. **When additional warranties are available as standard, they shall be included as a part of the bid for the benefit of the City.**
- 6.2 **DELAYED WARRANTIES** must be available for all equipment. Warranty start date shall be effective the date **that the completed unit is placed into service by the City.** The Contractor/Supplier shall furnish a delayed warranty card/document for each unit delivered and/or advise the City's Fleet Management/Receiving Department of the procedures to be followed for obtaining the delayed start of warranty coverage. Requests for delayed warranties will not exceed six (6) months after delivery.
- 6.3 Additional warranties, if required, are listed in the technical specifications for each item.
- 6.4 With respect to any goods, materials, equipment, supplies and parts furnished by it, Contractor/Supplier warrants:
 - 6.4.1 That all items are new and free of defects in title, design, material and workmanship.
 - 6.4.2 That each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed and conforms in all respects to the terms of the City purchase order and Specifications.
 - 6.4.3 That each replacement item is new, in accordance with original equipment
 - 6.4.4 Manufacturer's specifications are of a quality of at least as good as the quality of the item that it replaces (when the replaced item was new).
 - 6.4.5 That no item or its use infringes any patent, copyright or proprietary right.
- 6.5 The Contractor/Supplier's product shall be supported by an authorized service facility that can provide warranty repair, service and maintenance work within 24 hours from notification by the City.
- 6.6 Any warranty work shall be completed without cost to the City. Contractor/Supplier shall be responsible for all shipping and/or freight expense from the City's designated location to the Contractor/Supplier's facility for all warranty repair and/or maintenance and return to the City's designated location.
- 6.7 Contractor/Supplier shall provide a Manufacturer's Authorized Facility located within the Houston-Galveston region (Harris County and its nine adjacent counties, Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, Waller, San Jacinto and Austin) for all warranty and maintenance service.

7.0 Licenses and Permits:

- 7.1 Bidders are to adhere to all applicable federal, state as well as local laws and regulations. It is the Contractor/Supplier's responsibility to acquire all necessary licenses and permits required by law.
- 7.2 Contractor/Supplier shall be responsible for securing any and all inspections required by law, including state inspection stickers. Any fee charged for these inspections shall be the responsibility of the Contractor/Supplier and not the City of Houston.
- 7.3 At the time of delivery to the City of Houston, Contractor/Suppliers are required to provide temporary paper license tags/plates for motor vehicles or other equipment required by the State of Texas to be registered for operation on public highways.

SECTION B - PART I: GENERAL SPECIFICATIONS FOR NIGHT VISION BINOCULARS, (Continued):

7.0 Licenses and Permits (Continued):

- 7.4 **TEXAS OCCUPATIONS CODE, TITLE 14, CHAPTER 2301** (Formerly known as "The Texas Motor Vehicle Commission Code"): **(If Applicable to this Procurement)**
- 7.4.1 Section 2301.251: License Required: Generally (a) Unless a person holds a license issued under this chapter authorizing the activity, the person may not (1) engage in business as, serve in the capacity of, or act as a dealer, manufacturer, distributor, converter, representative, vehicle lessor, or vehicle lease facilitator in this state.
- 7.4.2 Sec. 2301.252: License required: Sale of New Motor Vehicles:(a) A person may not engage in the business of buying, selling, or exchanging new motor vehicles unless the person: (1) holds a franchised dealer's license issued under this chapter for the make of new motor vehicle being bought, sold, or exchanged; or (2) is a bona fide employee of the holder of a franchised dealer's license.
- 7.4.3 **Licensed Franchised Dealers** submitting bids for high water rescue cabs & chassis with installed bodies and other equipment, by this statute, are required to employ **properly licensed converters** for the conversions of the new motor vehicles.
- 7.4.4 **The Act of Submitting a Bid is regarded as doing business, as the entity is soliciting a sale.** Accordingly, each bidder must be a **licensed franchised dealer** at the time the bid is submitted.

8.0 Delivery / Inspection:

- 8.1 The item(s) specified herein, with delivery tickets and/or other required documents shall be delivered Prepaid F.O.B. Destination to the location(s) shown on the purchase order(s) **within the delivery time(s) as listed in the Technical Specifications** after receipt of City of Houston Purchase Order.
- 8.2 The Contractor/Supplier shall notify the City Contact listed in the "Ship To" section of the purchase order not less than three (3) days prior to expected delivery/arrival to permit inspection scheduling. The City contact shall advise Contractor/Supplier as to the date, time and location of authorized delivery/location. An authorized representative of the Contractor/Supplier shall supervise delivery to the City. The City will not assume any liability for any vehicle/equipment delivered to an unauthorized location and/or any vehicle/equipment delivered but not accepted by the City.
- 8.3 **Documentation at time of Delivery:**
Contractor/Supplier shall provide the following documentation **per purchase order** upon delivery:
- 8.3.1 Copy of purchase order(s) and invoice(s).
- 8.3.2 Manufacturer's Certificate of Origin shall be made out to "City of Houston, Texas", 900 Bagby, Houston, TX 77002 and delivered to the Fleet Management Department representative at the time of delivery of the vehicle/equipment, if applicable.
- 8.3.3 Temporary paper license tags/plates paperwork, if applicable for equipment being delivered.
- 8.3.4 Warranty policy(ies) and/or certifications as may be required in the Specifications.
- 8.3.5 Parts, service, operator and maintenance manual(s) as may be required in the technical specifications.
- 8.4 **Line Tickets at time of Delivery:**
- 8.4.1 Vehicles (If Applicable):
- 8.4.1.1 Line sheets/line tickets from the manufacturer of the vehicle shall be provided for each vehicle and delivered along with other City-required documents and manuals. Each line sheet/line ticket shall list all components that make up the vehicle chassis and shall include the make, model, and serial number of each component. In addition, line sheets/line tickets shall be provided for all mounted bodies specified for cabs & chassis, and shall include but not be limited to manufacturer, serial number, size, and tare weight. All mounted equipment and components shall be listed by the manufacturer, serial number, weight restrictions (lifts, booms, hydraulic arms etc) and all other relevant data that identifies the component.

SECTION B - PART I: GENERAL SPECIFICATIONS FOR NIGHT VISION BINOCULARS, (Continued):

8.0 Delivery / Inspection: (Continued)

8.4.2 Other Equipment (If Applicable):

8.4.2.1 Line sheets/line tickets from the manufacturer of the equipment specified shall be provided for all equipment delivered along with other City-required documents and manuals. Each line sheet/line ticket shall list all components that make up the equipment and shall include the make, model, and serial number of each component.

8.5 Weight Ticket Requirements per State of Texas Requirements for Title Transactions:

8.5.1 A weight certificate shall be required on all new commercial motor vehicles covered by the manufacturer's certificate when the carrying capacity (in accordance with the State's Tonnage Rating Guidelines) is rated in excess of one ton by the manufacturer.

8.5.2 A weight certificate shall also be required when additional equipment has been added to the new commercial motor vehicle after it was delivered by the manufacturer.

8.6 Each unit shall be delivered clean and shall be complete with all equipment operable. Each unit shall be inspected by the City before tender of delivery to determine its compliance with the specifications and/or to test its ability to perform its intended use.

8.7 Upon acceptance and receipt of the vehicle/equipment unit by the City, Contractor/Supplier shall obtain the signatures and employee numbers of the City's receiving employees on the City's Equipment Inspection/Receiver Report.

9.0 Liquidated Damages:

9.1 Under the terms of this Contract (Purchase Order), the Contractor/Supplier certifies to complete delivery of any vehicle/equipment within the specified calendar days, listed in the Delivery Section of the Technical Specifications, counting from the date the City of Houston purchase order is received by the Contractor/Supplier. Contractor/Supplier agrees that time is of the essence in performance of this Contract. The Contractor/Supplier and the City of Houston understand and agree that a breach of contract as to completion on time will cause damages to the City and that the actual damages from the harm would be difficult to estimate accurately. Therefore, for each and every calendar day that the vehicle/equipment is not delivered and/or accepted by the City beginning sixty-one (61) calendar days after the expiration of the time limit set in the Contract, the Contractor/Supplier shall be liable for and shall pay to the City the sum of **Fifty dollars (\$50.00)** per vehicle/equipment per calendar day, or portion thereof, as liquidated damages and not as a penalty. It is further agreed that the sum stipulated as liquidated damages is a reasonable estimate of the damage that will result from a failure of the Contractor/Supplier to deliver the product/service in accordance with the Contract. The amount of the liquidated damages due may be deducted by the City from any payment or payments due to the Contractor/Supplier, or if all payments otherwise due to the Contractor/Supplier have been made, the amount of the liquidated damages shall be immediately due and payable upon demand.

9.2 Contractor/Supplier will not be liable for delays in performing its obligations to the extent such delays are caused by unforeseeable conditions that are beyond the Contractor/Supplier's reasonable control and directly interfere with performance and are without Contractor/Supplier's fault or negligence (force majeure). However, Contractor/Supplier shall provide written notice to the City of the cause and extent of an **excusable delay** resulting from unforeseeable conditions. Upon cessation of the event causing the delay, Contractor/Supplier shall provide written notice to the City of the actual delay incurred. Determination of force majeure shall rest solely with the Chief Procurement Officer and the receiving department

10.0 Conflict in Terms:

10.1 Should there be any conflict between the General Specifications and the Technical Specifications, the Technical Specifications shall prevail.

11.0 Miscellaneous:

11.1 For purposes of this Contract (Purchase Order), the phrase "Chief Procurement Officer" shall be deemed to include both the Chief Procurement Officer, and his or her designated representative(s).

SECTION B - PART I: GENERAL SPECIFICATIONS FOR NIGHT VISION BINOCULARS, (Continued):

11.0 Miscellaneous (Continued):

11.2 Prospective bidders may propose "equivalent equipment" as additional item(s) for City-approved equipment listings of acceptable equipment in this bid document. Prospective bidders must submit, in writing to the Chief Procurement Officer, 1) a request for approval of proposed equipment, 2) Equipment Manufacturer's literature, and 3) a detailed comparison documenting that the equipment proposed is equivalent to existing equipment in the City-approved equipment listings. The approval request and all required documentation shall be in the Office of the Chief Procurement Officer no later than 14 calendar days before the bids for this Contract are scheduled to be opened and publicly read. Requests for equipment approval not received by the time specified above will not be considered for this Contract. Determination as to whether the equipment proposed is equivalent to the items in the City-approved equipment listings shall rest solely with the Chief Procurement Officer.

12.0 Contractor/Supplier References (See Exhibit No. 1):

12.1 In order to receive bid award consideration, the bidder must be able to demonstrate that it has provided, as a bidder, products that are similar to those offered on the electronic bid form to governmental agencies or other entities within the last two years.

12.2 If this information is required by the City, the bidder shall provide the information on Exhibit Form No. 1 within seven (7) calendar days after receipt of the City's written request. Failure by the Bidder to furnish the requested information in the time limit specified may be cause for the rejection of the bid.

SECTION B
PART II
TECHNICAL SPECIFICATIONS

ITEM NO. 1: NIGHT VISION BINOCULARS:

1.0 GENERAL:

- 1.1 Equipment Description
 - 1.1.1 The night vision binoculars described below will be purchased and used by the Houston Police Department, SWAT Division to integrate night vision capabilities and thermal capabilities into one seamless piece of equipment. With this equipment officers will have the ability to have a thermal overlay built into the night vision goggles. This will aide in officer safety to be able to see heat sources that may be more difficult to visually see under night vision alone. This will combine both capabilities into one seamless piece of equipment.
 - 1.1.2 The night vision binoculars will be drop shipped to a City of Houston facility to be named upon award of this procurement.

2.0 NIGHT VISION BINOCULARS SPECIFICATIONS:

- 2.1 Item: Night Vision Binoculars
- 2.2 4.25 Inches in Length X 4.5 Inches in Width X 3.9 Inches in Height
- 2.3 Less than or equal to 2.2 pounds in weight, to include google, battery pack, cable and accessories
- 2.4 Battery type: (4) 1.5v AA lithium batteries
 - 2.4.1 Battery life:
 - 2.4.1.1 FUSED – greater than or equal to eight (8) hours at 21 degrees celsius and greater; greater than or equal to four (4) hours at -32 degrees celsius
 - 2.4.1.2 Night Vision only must be greater than or equal to 48 hours at 21 degrees celsius and greater; greater than or equal to 24 hours at -32 degrees celsius.
- 2.5 Magnification:
 - 2.5.1 Optical – 1X
 - 2.5.2 Digital – 3X
- 2.6 Field of view:
 - 2.6.1 Thermal: 27.6 degrees plus or minus 3% H x 20.7 plus or minus 3%V, 0.75 mrad resolution
 - 2.6.2 Night Vision only – 40 degrees plus or minus 2%, greater than or equal to 1.3 cycles/mrad resolution
- 2.7 Thermal (Fused) – Selectable White-Hot and Outline modes with adjustable 12 gain, thermal gain and thermal brightness
- 2.8 Features (System must include the following):
 - 2.8.1 Compatible with smart battery pack which adds features such as wireless communications, Rapid Target Acquisition and Augmented Reality.
 - 2.8.2 Standard BNVS mount for maximum flexibility with helmet mounting hardware.
 - 2.8.3 Rotating binocular design to allow for low-profile against helmet when in stowed position and ability to use as a single monocular.
 - 2.8.4 Auto OFF when stowed; resumes power when deployed.
 - 2.8.5 Binocular I 2 channels.
 - 2.8.6 Incorporates two high-performance, white phosphor 18mm I 2 tubes.
 - 2.8.7 Finished L3 Harris parts.
 - 2.8.8 Gen III I 2 tubes with auto-gated technology to prevent damage in high light environments.
 - 2.8.9 Objective focus adjustment from 18 inches to infinity.
 - 2.8.10 Unfilmed night vision tubes- must be 2500 + FOM (Figure of Merit)
 - 2.8.11 Must be upgradeable via battery pack.
 - 2.8.12 Full color 1280 x 1024 (SXGA) display for maps and information overlay.
 - 2.8.13 Adjustable diopter eyepieces to allow use by operators with differing visual acuity.

SECTION B – PART II: TECHNICAL SPECIFICATIONS FOR NIGHT VISION BINOCULARS, (Continued):

3.0 LITERATURE:

- 3.1 To evaluate the bids, the user department and the City purchasing staff may require product literature/specifications sheets. Technical literature may be provided with the bid submittal but is not required. However, the City reserves the right to request literature or clarifications, as needed, after bid submittal.
- 3.2 If required, the Bidder must submit a minimum of TWO SETS of the requested catalogue information, descriptive literature specifications and/or (if applicable) engineering drawings that completely identify the items bid. Bidder(s) shall furnish the requested literature within seven (7) calendar days after the receipt of the City's written request. FAILURE ON BIDDER'S PART TO FURNISH THE REQUESTED TECHNICAL DATA IN THE TIME LIMIT GIVEN MAY BE CAUSE FOR REFLECTION OF THE BID.

4.0 DELIVERY / INSPECTION:

- 4.1 The items specified above, with delivery tickets and/or other required documents shall be delivered FOB Destination, to the location shown on the purchase order within the delivery time as listed in the Technical Specifications after receipt of the City of Houston Purchase Order.
- 4.2 The Supplier shall notify the City Contact listed in the "Ship To" section of the purchase order not less than three (3) days prior to expected delivery/arrival to permit inspection scheduling. The City Contact shall advise Prime Contractor/Supplier as to the date, time, and location of authorized delivery location. An authorized representative of the Prime Contractor/Supplier shall supervise the delivery to the City. The City will not assume any liability for equipment delivered to an unauthorized location.
- 4.3 Documentation at time of delivery:
Prime Contractor/Supplier shall provide the following documentation per purchase order upon delivery:
 - 4.3.1 Copy of purchase order and original invoice.
 - 4.3.2 Warranty policy(ies) and/or certifications as may be required in the Specifications.
 - 4.3.3 Parts, service, operators and maintenance manual(s) as may be required in the Technical Specifications.

5.0 WARRANTY:

- 5.1 A minimum twelve (12) month warranty on both materials and workmanship shall be provided. The warranty period shall commence the date the City officially accepts the completed item(s). When extended warranties are available as standard, they shall be included as a part of the bid for the benefit of the City. Any and all documents necessary to effect warranty shall be properly applied for and submitted by the Bidder.
- 5.2 Additional warranties required are listed in the Technical Specifications for each item.
- 5.3 With respect to any goods, materials, equipment, supplies and parts furnished by it, Prime Contractor/Supplier warrants:
 - 5.3.1 That all items are new and free of defects in title, design, material and workmanship.
 - 5.3.2 That each item meets or exceeds the manufacturer's specifications and requirements for the equipment structure, or other improvement in which the item is installed and conforms in all respects to the terms of the City Purchase Order and Specifications.
 - 5.3.3 That each replacement item is new, in accordance with original equipment
 - 5.3.4 Manufacturer's specifications are of a quality of at least as good as the quality of the item it replaces (when the replaced item was new).
 - 5.3.5 That no item or its use infringes any patent, copyright or proprietary right.
- 5.4 The Prime Contractor/Supplier's product shall be supported by an authorized service facility that can provide warranty repair, service and maintenance work within 24 hours from notification by the City.
- 5.5 Any warranty work shall be completed without cost to the City. Prime Contractor/Supplier shall be responsible for all shipping and/or freight expense from the City's designated location to the Prime Contractor/Supplier's facility for all warranty repair and/or maintenance and return to the City's designated location.

**SECTION C
GENERAL TERMS AND CONDITIONS**

1.0 COMPETITIVE BIDDING:

1.1 It is the intent of the City of Houston to solicit the lowest and best responsible bid or price under competitive conditions. All materials and/or equipment shall be new unless stated otherwise. Prospective bidders are advised that the specifications within this ITB are not to be considered restricted to any referenced manufacturer.

2.0 AWARD:

2.1 The City reserves the right to consider and make awards of bids on articles of similar nature that will in all respects serve the purpose for which the purchase is being made. The City reserves the right to be the sole judge as to whether such articles will serve the purpose.

2.2 Unless otherwise specified, the City reserves the right to accept or reject in whole or in part any bid submitted or to waive any informalities that are in the best interests of the City.

3.0 CONDITIONS PART OF BID:

3.1 In the event of any conflict, the terms and provisions incorporated in the bid specifications shall control over the terms and provisions of the General Terms & Conditions for any or all purposes. Otherwise, all the terms and provisions appearing within the General Terms & Conditions shall be given full effect and shall be construed in harmony to the maximum extent by the parties hereto.

3.2 The failure of the City to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Contract (Purchase Order), General Terms & Conditions or Specifications shall not be construed as a waiver or relinquishment of the future performance of such term, covenant or condition by the City, but the obligation of the Contractor/Supplier with respect to such future performance shall continue in full force and effect.

4.0 SHIPPING TERMS:

4.1 Prices shall be prepaid F.O.B. destination to the delivery locations, Houston, TX, as indicated on individual City of Houston purchase orders. Contractor/Supplier shall retain title and control of all goods until they are delivered and the contract of coverage (Purchase Order) has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor/Supplier. All claims for visible or concealed damage shall be filed by the Contractor/Supplier. The City will notify the Contractor/Supplier promptly of any damaged goods and shall assist the Contractor/Supplier in arranging for inspection.

5.0 SILENCE OF SPECIFICATIONS:

5.1 The apparent silence of these specifications as to any detail or the apparent omission from them of a detailed description concerning any point shall be regarded as meaning that only the best commercial practice shall prevail and only materials and workmanship of first quality are acceptable. All interpretations of these specifications shall be made upon the basis of this statement.

6.0 SPECIFIED EQUIPMENT, OR EQUIVALENT:

6.1 Wherever in the specifications any materials or processes are indicated or specified by patent or proprietary name and/or by name of manufacturer, such specifications shall be deemed to be used for facilitating descriptions of the performance, materials and/or processes desired and shall be deemed to be followed by the words, "or equivalent", if not so stated in the specifications herein.

6.2 The burden of proof shall rest with the bidder, during 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 ITEM(S) BID IS(ARE) EQUIVALENT TO THOSE SPECIFIED SHALL REST SOLELY WITH THE CHIEF PROCUREMENT OFFICER AND THE RECEIVING DEPARTMENT.**

SECTION C - GENERAL TERMS & CONDITIONS FOR NIGHT VISION BINOCULARS, (Continued):

7.0 BRAND NAMES:

7.1 Any manufacturer's names, trade names, brand names, or catalog numbers used in the specifications are for describing and establishing the general quality level, design and performance desired. Such references are not intended to limit or restrict bidding by other Contractor/Suppliers but are intended to approximate the quality design or performance that is desired. Any bid that proposes like quality, design or performance, will be considered. Equivalent products will be considered, provided a complete description and product literature is provided. Unless a specific substitution is made, the assumption will be that the item bid is exactly as specified on the Invitation to Bid.

8.0 PATENTS:

8.1 THE CONTRACTOR/SUPPLIER AGREES TO INDEMNIFY AND SAVE HARMLESS THE CITY, ITS AGENTS EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL SUITS AND ACTIONS OF EVERY NATURE AND DESCRIPTION BROUGHT AGAINST THEM OR ANY OF THEM, FOR OR ON ACCOUNT OF THE USE OF PATENTED APPLIANCES, PRODUCTS OR PROCESSES, AND IT SHALL PAY ALL ROYALTIES AND CHARGES WHICH ARE LEGAL AND EQUITABLE. EVIDENCE OF SUCH PAYMENT OR SATISFACTION SHALL BE SUBMITTED, UPON REQUEST OF THE CHIEF PROCUREMENT OFFICER, AS A NECESSARY REQUIREMENT IN CONNECTION WITH THE FINAL ESTIMATE FOR PAYMENT IN WHICH SUCH PATENTED APPLIANCE, PRODUCTS OR PROCESSES ARE USED.

9.0 RELEASE:

9.1 CONTRACTOR/SUPPLIER AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

10.0 INDEMNIFICATION:

10.1 CONTRACTOR/SUPPLIER AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (1) CONTRACTOR/SUPPLIER'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR/SUPPLIER") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- (2) THE CITY'S AND CONTRACTOR/SUPPLIER'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT; AND
- (3) THE CITY'S AND CONTRACTOR/SUPPLIER'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT.

10.2 CONTRACTOR/SUPPLIER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR/SUPPLIER'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. CONTRACTOR/SUPPLIER SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

SECTION C - GENERAL TERMS & CONDITIONS FOR NIGHT VISION BINOCULARS, (Continued):

10.0 INDEMNIFICATION: (Continued)

10.3 INDEMNIFICATION PROCEDURES:

- (1) Notice of Claims. If the City or Contractor/Supplier receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:
- (a) a description of the indemnification event in reasonable detail,
 - (b) the basis on which indemnification may be due, and
 - (c) the anticipated amount of the indemnified loss.

This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10-day period, it does not waive any right to indemnification except to the extent that Contractor/Supplier is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

(a) Assumption of Defense. Contractor/Supplier may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor/Supplier shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor/Supplier must advise the City as to if it will defend the claim. If Contractor/Supplier does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(b) Continued Participation. If Contractor/Supplier elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor/Supplier may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

11.0 INSURANCE: (See Exhibit No. 2, Pre-Approved Certificate of Insurance)

11.1 Prior to award and/or starting work, Contractor/Supplier must present a Certificate of Insurance evidencing the insurance coverage specified herein. This is a mandatory requirement. Only unaltered, original insurance certificates are acceptable. Photocopies are unacceptable.

*Exception: Proof of insurance coverage is not required by Contractor/Supplier if the specified equipment will be dropped-shipped by manufacturer, or delivered by a common carrier, and this contract agreement (Purchase Order) does not require Contractor/Supplier to perform a labor or service component at a City facility. Prior to award, Contractor/Supplier must present a written statement attesting to this exception.

11.2 Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

SECTION C - GENERAL TERMS & CONDITIONS FOR NIGHT VISION BINOCULARS, (Continued):

11.0 INSURANCE: (Continued)

11.2 INSURANCE COVERAGES: (Continued)

- 11.2.1 Commercial General Liability insurance including Contractual Liability insurance: \$500,000 per occurrence; \$1,000,000 aggregate
- 11.2.2 Workers' Compensation including Broad Form All States endorsement: Statutory amount
- 11.2.3 Automobile Liability insurance: \$1,000,000 combined single limit per occurrence
Defense costs are excluded from the face amount of the policy.
Aggregate Limits are per 12-month policy period unless otherwise indicated.
- 11.2.4 Employer's Liability:
Bodily injury by accident \$100,000 (each accident)
Bodily injury by disease \$100,000 (policy limit)
Bodily injury by disease \$100,000 (each employee)

11.3 All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City. The Contractor shall give 30-day written notice to the Director if any of its insurance policies are cancelled, materially changed or non-renewed. Within the 30-day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or non-renewed to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may:

- 11.3.1 Immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
- 11.3.2 Purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.
- 11.3.3 All certificates of insurance submitted by Contractor shall be accompanied by endorsements for additional insured coverage in favor of the City for Commercial General Liability and Automobile Liability policies; and waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and Worker's Compensation/Employers' Liability policies.
- 11.3.4 For pre-approved endorsement forms, see Exhibit No. 2 or proceed to Business Forms, Sample Certificate of Insurance at <http://purchasing.houstontx.gov/forms.shtml>

**FORWARD CERTIFICATE TO BUYER AT: City of Houston/Finance Department
Strategic Procurement Division
P.O. Box 1562
Houston, Texas 77251-1562**

12.0 WORKER'S COMPENSATION INSURANCE:

12.1 On any City award with a labor component or any award where Supplier delivery people make deliveries for City sites, Worker's Compensation Insurance as shown in the Insurance Section is required.

13.0 DRUG DETECTION AND DETERRENCE PROCEDURE: (See Online Forms)

13.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

SECTION C - GENERAL TERMS & CONDITIONS FOR NIGHT VISION BINOCULARS, (Continued):

13.0 DRUG DETECTION AND DETERRENCE PROCEDURE (Continued):

- 13.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("COD"):
- 13.2.1 a copy of its drug-free workplace policy,
 - 13.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in "Table 2 – Documents and Forms", together with a written designation of all safety impact positions, and
 - 13.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in "Table 2 – Documents and Forms."
- 13.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially like Exhibit "G." Contractor shall submit the Drug Policy Compliance Declaration to the COD within 30 days of the expiration of each 6-month period of performance, and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed, or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.
- 13.4 Contractor also shall file updated designations of safety impact positions with the COD if additional safety impact positions are added to Contractor's employee workforce.
- 13.5 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

14.0 MINORITY AND WOMEN BUSINESS ENTERPRISES: (Not Applicable)

- 14.1 It is the City of Houston's policy to ensure that Minority and Women Business Enterprises (MWBE) have full opportunity to compete for and participate in City contracts. Contractor shall comply with the City's MWBE Program as set forth in Chapter 15, Article V of the City of Houston Code of Ordinances, as well as the Policies and Procedures of the Office of Business Opportunity (OBO) found on OBO's website at <https://www.houstontx.gov/obo/policies-procedures.html>. Contractor shall make good faith efforts to award subcontracts and supply agreements in at least ___% of the value of the Agreement to certified MWBEs. If the contractor is a certified MBE or WBE, Contractor may count its self-performance to meet a portion of the overall goal. Contractor acknowledges that they have reviewed the requirements for good faith efforts on file with OBO, available at <https://www.houstontx.gov/obo/docsandforms/goodfaiethefforts.pdf>, and will comply with the set forth requirements.
- 14.2 Contractor shall maintain records of subcontracts and supply agreements with certified MWBEs, containing language required herein. In addition, Contractor shall submit all disputes that may arise with MWBE subcontractors/supplies to mediation provided by OBO if other attempts do not result in a resolution.
- 14.3 MWBE subcontracts must contain the terms set out in "Section A, Table 1". {Use when applicable}

15.0 REJECTIONS:

- 15.1 Articles not in accordance with samples and specifications must be removed by the Contractor/Supplier and at his expense. All disputes concerning quality of supplies delivered under this offer will be determined by the Chief Procurement Officer or designated representative.
- 15.2 All articles enumerated in the offer shall be subject to inspection on delivery by an officer designated for the purpose and if found inferior to the quality called for, or not equal in value to the Department's samples, or deficient in weight, measurements, workmanship or otherwise, this fact shall be certified to the Chief Procurement Officer who shall have the right to reject the whole or any part of the same.

16.0 FORCE MAJEURE:

- 16.1 Timely performance by both parties is essential to the award. However, neither party is liable for delays or other failures to perform its obligations to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.

SECTION C - GENERAL TERMS & CONDITIONS FOR NIGHT VISION BINOCULARS, (Continued):

16.0 FORCE MAJEURE: (Continued):

- 16.2 This relief is not applicable unless the affected party does the following:
- 16.2.1 uses due diligence to remove the Force Majeure as quickly as possible; and
 - 16.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.
- 16.3 The City may perform or solicit functions itself during periods of Force Majeure. Such performance does not constitute a default or breach of this award by the City.
- 16.4 If the Force Majeure continues for more than 30 days, the Chief Procurement Officer or Director upon written authorization by the Chief Procurement Officer may terminate this award by giving 30 days' written notice to Supplier. This termination is not a default or breach. **SUPPLIER WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE AT THE TIME OF THE TERMINATION.**

17.0 TAXES:

- 17.1 The City is exempt from the Federal Excise and Transportation Tax, and the limited Sales and Use Tax. Unless the Bid Form or Specifications specifically indicate otherwise, the bid price must be net exclusive of above-mentioned taxes. A Contractor/Supplier desiring refunds of, or exemptions from, taxes paid on merchandise accepted by the City, must submit the proper forms, and the Chief Procurement Officer, if satisfied as to the facts, may approve or issue the necessary certificates.

18.0 INVOICING:

- 18.1 To expedite payments all invoices must be submitted in triplicate, itemized as to quantity, part and/or model number, description in the same order and form as in the City of Houston Purchase Order. Variations will only delay payment. In addition, invoices must show the name of the Department, Division or Section to which the merchandise was delivered, and the City of Houston Purchase Order Number.
- 18.2 All delivery tickets must have a description of the item delivered.
- 18.3 Mail invoices and a copy of the signed City of Houston Equipment/Receiver Report to the Accounts Payable Section of the Department and to the address, as noted on individual purchase orders.
- 18.4 Delivery tickets and packing slips will contain the same information as the invoice.
- 18.5 The City of Houston Equipment/Receiver Report must be signed by the receiving employee with their City Employee Number and must be signed by Contractor/Supplier Representative.

19.0 PAYMENT:

- 19.1 The City of Houston's standard payment term is to pay 30 days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (TX. Gov't Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from Contractor/Supplier as follows:
- Payment Time - 10 Days: 2% Discount
 - Payment Time - 20 Days: 1% Discount
- 19.2 If the City fails to make a payment according to the early payment schedule above, but does make the payment within the time specified by the Prompt Payment Act, the City shall not receive the discount, but shall pay no other penalty. When the payment date falls on a Saturday, Sunday, or official holiday when City offices are closed and City business is not expected to be conducted, payment may be made on the following business day.

20.0 PROMPT PAYMENT OF SUBCONTRACTORS:

- 20.1 Supplier shall make timely payments to all persons and entities supplying labor, materials or equipment for the performance of this award. **SUPPLIER SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF SUPPLIER'S FAILURE TO MAKE THESE PAYMENTS.**

SECTION C - GENERAL TERMS & CONDITIONS FOR NIGHT VISION BINOCULARS, (Continued):

21.0 INSPECTIONS AND AUDITS:

- 21.1 The City reserves all rights to review all payments made to Suppliers by auditing later. Subject to such audit, any overpayments may be recovered from the Supplier.
- 21.2 Representatives of the City have the right to examine the books of all subcontractors and/or suppliers supplying goods and/or services under the prime award insofar as those books and records relate to performance under the prime award.
- 21.3 City representatives may have the right to perform, or have performed, (1) audits of Supplier's books and records, and (2) inspections of all places where work is undertaken about this award. Supplier shall keep its books and records available for this purpose for at least three years after this award terminates. This provision does not affect the applicable statute of limitations.

22.0 CONTRACTOR DEBT:

- 22.1 If Contractor/Supplier, at any time during the term of this agreement, incurs a debt, as the word is defined in Section 15-122 of the Houston City Code of Ordinances, it shall immediately notify the City Controller in writing. If the City Controller becomes aware that Contractor/Supplier has incurred a debt, the City Controller shall immediately notify Contractor/Supplier in writing. If Contractor/Supplier does not pay the debt within 30 days of either such notification, the City Controller may deduct funds in an amount equal to the debt from any payments owed to Contractor/Supplier under this agreement, and Contractor/Supplier waives any recourse therefor.

23.0 SUCCESSORS & ASSIGNS:

- 23.1 Contractor/Supplier may not assign this (Purchase Order) or dispose of substantially all its assets without the written consent of the Chief Procurement Officer. Contractor/Suppliers failure to obtain such consent shall be an event of default, authorizing the Purchasing Agent to terminate this contract (Purchase Order) according to its terms.

24.0 CONTAMINATED MATERIALS:

- 24.1 Each Supplier shall be required to identify their source of supply. No material will be accepted from a hazardous or toxic waste site, regardless of whether the site has been identified by either a Local, State or Federal Agency. No contaminated, toxic, hazardous waste products or heavy metal product shall be contained in these deliveries. If any material supplied to the City is found to be contaminated or contain heavy metal products, it will be the responsibility of the Supplier to remove and replace the contaminated product at their expense and at no cost to the City. The City has the option to solicit the removal of any contaminated material and charge back the Supplier all costs involved.

25.0 CHANGE ORDERS:

- 25.1 At any time during the Agreement Term, the Chief Procurement Officer, or designated representative, may issue a change order to increase or decrease the scope of services, or change plans and specifications, as may be necessary to accomplish the general purposes of this Agreement. Contractor/Supplier shall furnish the services or deliverables in the change order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the additional work.
- 25.2 Contractor/Supplier shall not make any changes to the specifications contained herein without written authorization from the Chief Procurement Officer or designated representative.
 - 25.2.1 The City may refuse to accept all or part of the work performed or equipment/supplies delivered if changes are made to the specifications without the written authorization of the Chief Procurement Officer or designated representative. The City shall not be responsible for costs incurred by the Contractor/Supplier on unauthorized change orders.

SECTION C - GENERAL TERMS & CONDITIONS FOR NIGHT VISION BINOCULARS, (Continued):

25.0 CHANGE ORDERS (Continued):

25.2.2 A letter with supporting documentation of the requested change(s) shall be submitted to the Chief Procurement Officer, and the Chief Procurement Officer must approve any requested changes by written authorization **PRIOR TO ANY CHANGES BEING PERFORMED**. Documentation acceptable to the Chief Procurement Officer as evidence of Contractor/Supplier's change(s) shall reference the City's bid specification by section(s) and page number(s). The face of the envelope containing this letter shall clearly state "CHANGE ORDER REQUEST". The letter shall reference the **CITY BID INVITATION NUMBER, EQUIPMENT DESCRIPTION and CITY PURCHASE ORDER NUMBER(S)**. Failure to provide clear and concise evidence as stated above and in the format requested will result in denial until Contractor/Supplier complies with these provisions. Documentation shall be mailed to:

**Chief Procurement Officer
City of Houston, Finance Department
Strategic Procurement Division
P. O. Box 1562
Houston, TX 77251-1562**

25.3 The Chief Procurement Officer, or designated representative, may issue change orders, subject to the following limitations:

25.3.1 City Council expressly authorizes the Chief Procurement Officer or Director to approve a Change Order of \$50,000 or less. A change order of more than \$50,000 over the approved contract (Purchase Order) amount must be approved by the City Council.

25.3.2 The total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.

25.3.3 For any items described in a Change Order that the Contractor/Supplier is otherwise required to provide under the Original Agreement, the City is not obligated to pay additional money to Contractor/Supplier.

26.0 TERMINATION OF AGREEMENT:

26.1 By the City for Convenience:

26.1.1 The Chief Procurement Officer may terminate this Contract (Purchase Order) at any time upon 30 calendar days' notice in writing to the Contractor/Supplier. Upon receipt of such notice, Contractor/Supplier shall, unless the notice directs otherwise, discontinue all services in connection with the performance of the Contract (Purchase Order) and shall proceed to cancel promptly all existing orders and contracts insofar as such orders and contracts are chargeable to this Contract (Purchase Order). As soon as practicable after the receipt of notice of termination, the Contractor/Supplier shall submit a statement to the appropriate department(s) showing in detail the services performed or items delivered under this Contract (Purchase Order) to date of termination. The City agrees to compensate the Contractor/Supplier for that portion of the prescribed charges for which the services were performed, or items delivered under this Contract (Purchase Order) and not previously paid.

SECTION C - GENERAL TERMS & CONDITIONS FOR NIGHT VISION BINOCULARS, (Continued):

26.0 TERMINATION OF AGREEMENT (Continued):

26.2 By the City for Default by Contractor/Supplier:

26.2.1 In the event that the materials and/or services furnished by the Contractor/Supplier do not conform to the standard set forth herein, or if the deliveries and servicing of this Contract (Purchase Order) do not conform to the requirements detailed herein, the City through a written notice from the Purchasing Agent to the Contractor/Supplier describing such default may as its options:

- (1) Terminate the Contract (Purchase Order) for default and the City shall have no further obligation under the Contract (Purchase Order).
- (2) Allow the Contractor/Supplier to cure default within 30 calendar days from receipt of notice unless the Chief Procurement Officer specifies a longer period of time in the notice. The City, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, Contractor/Supplier cures such default to the City's satisfaction, then the proposed termination shall be ineffective. If Contractor/Supplier fails to cure such default prior to the proposed date of termination, then the City may terminate its performance under this Contract (Purchase Order) as of such date and have no further obligation under the Contract (Purchase Order).

26.2.2 In the event of failure to deliver any or all of the items or to perform required services, the City may cover its loss by reasonably procuring from another source the items not delivered or the services not performed. Contractor/Supplier shall be responsible for, and shall pay to the City immediately upon demand, the difference in price between that offered by the Contractor/Supplier and that which the City was forced to pay for covering Contractor/Supplier's failure to deliver or perform services.

26.3 By the Contractor/Supplier for Default by City:

26.3.1 Default by the City shall occur if the City fails to perform or observe the terms and conditions of this Contract (Purchase Order) required to be performed or observed by the City, and the Contractor/Supplier gives notice in writing to the City of the act or omission claimed by the Contractor/Supplier to constitute default on the part of the City.

26.3.2 Upon receipt of such notice in writing from the Contractor/Supplier; however, the City shall have 30 calendar days to cure such default. The Contractor/Supplier, at its sole option, may extend the proposed date of termination to a later date.

26.3.3 If City cures such default prior to the proposed date of termination, the proposed termination shall be ineffective. If the City fails to cure such default prior to the proposed date of termination, then the Contractor/Supplier may terminate its performance under this Contract (Purchase Order) as of such date.

27.0 SUSPENSION AND DEBARMENT:

27.1 Respondent acknowledges that this Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, Respondent is required to verify that none of the consultants, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). Respondent must comply with 2 C.F.R. pt 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into so as to verify that none of any such consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). Such certifications are a material representation of fact relied upon by the City. If it is later determined that Respondent did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt 3000, subpart C, then in addition to remedies available to the City, the State of Texas, and the Federal Government (including any department, agency or division thereof) may pursue available remedies, including but not limited to suspension and/or debarment. Respondent agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pl. 3000, subpart C throughout the period of the Agreement. Respondent further agrees to include a provision requiring such compliance in its lower tier covered transactions, including but not limited to offers from bidders or proposers, to require their agreement to comply with 2 C.F.R. pt.

SECTION C - GENERAL TERMS & CONDITIONS FOR NIGHT VISION BINOCULARS, (Continued):

27.0 SUSPENSION AND DEBARMENT:

180, subpart C and 2 C.F.R. pt. 3000, subpart C while their offer is valid and throughout the period of any contract that may arise from their offer or proposal.

28.0 FEDERAL REGULATIONS:

- 28.1 Contractor must be registered with the US Federal Contractor Registration- System for Award Management (SAM). Please register at the following: <https://www.sam.gov/SAM/>.
- 28.2 Contractor shall be qualified to do business in the State of Texas and must assure that it will take such actions necessary to remain so qualified.
- 28.3 Contractor shall comply with all Federal, State, and local laws, ordinances, rules, and regulations applicable to its activities and obligations under this contract.

29.0 BYRD ANTI-LOBBYING AMENDMENT:

- 29.1 For any bid, offer, or agreement exceeding \$100,000, Respondent shall file with the City a Certification Regarding Lobbying in the form set out in **Exhibit 2**.
- 29.2 Respondent shall comply with 31 U.S.C. § 1352 and include a requirement to comply with these regulations in any subconsultant or lower tier covered transaction it enters into.

30.0 EQUAL EMPLOYMENT OPPORTUNITY:

- 30.1 The provisions set out in **Exhibit 4** relating to Equal Employment Opportunity and attached to this solicitation are hereby incorporated by reference herein for all purposes as fully and completely as if set forth verbatim herein. For the purpose of interpreting such, the Respondent shall be the "Contractor".
- 30.2 Respondent shall comply with the applicable Equal Opportunity Clause required by the United States of America, including but not limited to the provisions of 41 CFR § 60-1.4(b). These provisions are inclusive of any amendments which may be made to such regulations. Further, Respondent shall include the summary of the provisions of 41 CFR § 60-1.4(b), as may be amended, in subcontracts it enters into under this Agreement. This summary is set forth in **Exhibit 4**.

31.0 COMPLIANCE WITH LAWS:

- 31.1 Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances in its performance under this Agreement.
- 31.2 Contractor acknowledges that federal funds financial assistance will be used to fund this Agreement.
- 31.3 Contractor shall comply with all applicable federal law, regulations, executive orders, and policies, procedures and directives.
- 31.4 Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to this Agreement.
- 31.5 The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the City, Contractor or any other party pertaining to any matter resulting from the Agreement.

EXHIBIT NO. 1

CONTRACTOR/SUPPLIER REFERENCES

In order to receive bid award consideration, the bidder must be able to demonstrate that it has provided, as a contractor/supplier, products that are similar to those offered on the electronic bid form to governmental agencies or other entities within the last two years. The references should be listed in the space provided below. Please attach additional pages as necessary. If references are not included with the bid, the bidder shall be required to provide such references to the City of Houston within five working days from receipt of a written request from the City of Houston to do so. **Bidder's capability and experience shall be a factor in determining the Contractor's responsibility.** The City of Houston reserves the right to determine if such products are appropriately similar to those offered.

8. Entity Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____

2. Entity Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____

3. Entity Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____

4. Entity Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____

5. Entity Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____

EXHIBIT NO. 2

BYRD ANTI-LOBBYING CERTIFICATION

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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

(3) The undersigned 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 subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, 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.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT NO. 3

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS – LOWER-TIER COVERED TRANSACTIONS

This Agreement is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Contractor is required to confirm that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

INSTRUCTIONS FOR CERTIFICATION

By signing and submitting this proposal, the Contractor (referred to herein as the “prospective lower tier participant”) is providing the certification set out below.

The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS-
LOWER TIER COVERED TRANSACTIONS: (Continued)**

The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

(Typed or Printed Name)

(Date)

(Signature)

(Title)

EXHIBIT NO. 4

EQUAL EMPLOYMENT OPPORTUNITY CONTRACT COMPLIANCE

8. SCOPE

Pursuant to City Council Ordinance No. 78-1538, passed August 9, 1978, all contracts entered into by the City of Houston involving the expenditure of \$10,000.00 or more shall incorporate the following equal employment opportunity clause.

II. REQUIREMENTS

8. The Contractor, subconsultant, Contractor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, or age. The engineer, subconsultant, Contractor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, sexual orientation, gender identity, national origin, or age. Such action will include, but be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The engineer, subconsultant, Contractor, supplier, or lessee agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The Contractor, subconsultant, Contractor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, sexual orientation, gender identity, national origin, or age.
3. The Contractor, subconsultant, Contractor, supplier, or lessee will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or workers' representative of the engineer's and subconsultant's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor, subconsultant, Contractor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal opportunity and affirmative action provisions applicable, and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The Contractor, subconsultant, Contractor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246 and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the engineer, subconsultant, Contractor, supplier, or lessee.
6. In the event of the Contractor's, subconsultant's, Contractor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract, or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the engineer, subconsultant, Contractor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The Contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965 so that such provisions will be binding upon each subconsultant or Contractor. The Engineer will take such action with respect to any subconsultant or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the engineer becomes involved in, or is threatened with litigation with a subconsultant or Contractor as a result of such direction by the contracting agency, the engineer may request the United States to enter into such litigation to protect the interests of the United States.

EQUAL EMPLOYMENT OPPORTUNITY CONTRACT COMPLIANCE: (Continued)

8. The Contractor shall file and shall cause each of his subconsultants, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the engineer and each subconsultant.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT 5

PURCHASE ORDER TERMS AND CONDITIONS

The term “contractor,” “sub-contractor,” “Contractor,” “supplier,” or “lessee” for the purpose of this document shall have the same meaning, and any reference to word “City”, shall mean the City of Houston

Acceptance:

The “City” shall accept the item(s) on the twentieth (20th) business day after the date of receipt of the item(s) by the “City” unless prior to the twentieth (20th) day, the City of Houston Purchasing Agent or his/her designee delivers a notice to the “contractor” stating the reason(s) why the item(s) have not been accepted.

Amendment or Modification:

Except as otherwise provided in this Contract, this Contract shall be subject to change, amendment or modification only by the mutual written consent of the parties hereto.

Applicable Laws:

This Contract shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Contract shall lie exclusively in Harris County, Texas.

Captions:

The captions at the beginning of the Articles of this Contract are guides and labels to assist in locating and reading such Articles, and shall not be restrictive of the subject matter of any article, section or part of this Contract.

Default:

If the “contractor” fails to provide the Official Performance Bond (if required by the purchase order and/or change order), or the item(s) listed on the purchase order and/or change order at the unit prices quoted, the “City”, at its option, may terminate this Contract for default by delivering a written notice to the “contractor”, and the “City” shall have no further obligation under this Contract. At the City’s option, through a notice to the “contractor” in writing from the City of Houston Purchasing Agent, the “contractor” may be allowed to cure such default within the time specified in said notice. In the event there is a failure to deliver any item(s), the “City” may cover its loss by reasonably procuring from another source the item(s) not delivered. The “contractor” shall be responsible for, and shall pay to the “City” immediately upon demand; the difference in price between that offered by the “contractor” and that which the “City” was forced to pay for covering the “contractor’s” failure to deliver. Default by the “City” shall occur if the “City” fails to perform, or observe the terms and conditions of this Contract, and the “contractor” gives notice in writing to the “City” within thirty (30) days of the act or omission claimed by the “contractor”. Upon receipt of such notice in writing from the “contractor”, the “City” shall have thirty (30) days to cure such default.

Delivery:

The “contractor” shall:

- Deliver the item(s) specified on the purchase order and/or change order to the designated “FOB Point”, within the time specified by the “City”. Timely delivery is of the essence to this Contract.
- Ensure all deliveries are made on a business day, during business hours (Monday through Friday, except City Council designated holidays, from 8:00 am, to 5:00 pm).
- Provide, at no additional charge, any equipment, labor, packaging, crating or padding necessary to load, tie down and unload the item(s) to be delivered, so that they may be transported in a normal, safe manner without damage.

PURCHASE ORDER TERMS AND CONDITIONS: (Continued)

- Be liable for all risks for the item(s) until accepted by the “City”. The “contractor” is responsible for any freight charges incurred in delivering the item(s) to the “FOB Point.” A representative of the “City” will sign the “contractor’s” delivery ticket to acknowledge receipt of the item(s) by the “City”. Unless the

“contractor” receives such signature, the “City” shall not be responsible for the receipt of the item(s). The “City” retains the right to inspect the delivered item(s) prior to acceptance, and shall not accept item(s) that do not conform to the requirements of this Contract.

In the event the item(s) on the face of the purchase order and/or the change order are services rather than goods, such services shall be performed in accordance with the specifications, or scope of work, and the “City” reserves the right to require the “contractor” to provide service(s) in conformance with such description prior to accrual of the City’s obligation for payment.

Equal Opportunity Ordinance:

The “contractor” is and represents to be an equal opportunity employer and agrees to abide by the terms of the “City” of Houston Equal Opportunity Ordinance as follows:

- The “contractor”, “sub-contractor”, “Contractor”, supplier, or “lessee” will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The “contractor”, “sub-contractor”, “Contractor”, “supplier”, or “lessee” will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not limited to: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The “contractor”, “sub-contractor”, “Contractor”, “supplier”, or “lessee” agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the “City” setting forth the provisions of this Equal Employment Opportunity Clause.
- The “contractor”, “sub-contractor”, “Contractor”, “supplier”, or “lessee” states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
- The “contractor”, “sub-contractor”, “Contractor”, “supplier”, or “lessee” will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or workers representative of the “contractor’s” and “sub-contractor’s” commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- The “contractor”, “sub-contractor”, “Contractor”, “supplier”, or “lessee” will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and applicable orders of the Department of Labor or other Federal Agency responsible for enforcement of applicable equal opportunity and affirmative action provisions and will likewise furnish all information and reports required by the Mayor and/or “contractor” Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
- The “contractor” shall file and shall cause each of his “sub-contractor’s”, if any, to file compliance reports with the “City” in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the “contractor” and each “sub-contractor”.
- The “contractor”, “sub-contractor”, “Contractor”, “supplier”, or “lessee” will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Department of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate “City” and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and workforce statistics of the “contractor”, “sub-contractor”, “Contractor”, “supplier”, or “lessee”.
-

PURCHASE ORDER TERMS AND CONDITIONS: (Continued)

- In the event of the “contractor’s”, “sub-contractor’s”, “Contractor’s”, “supplier’s”, or “lessee’s” noncompliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part, and the “contractor”, “sub-contractor”, “Contractor”, “supplier”, or “lessee” may be declared ineligible for further “City” contracts in accordance with procedures provided in Executive Order No. 11246, and such other

sanctions may be imposed, and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

- The “contractor” shall include the provisions of paragraphs 1-6 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each “sub-contractor” or “Contractor”. The “contractor” will take such action with respect to any “sub-contractor” or purchase order as the contacting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event the “contractor” becomes involved in, or is threatened with, litigation with a “sub-contractor” or “Contractor” as a result of such direction by the contracting agency, the “contractor” may request the United States to enter into such litigation to protect the interests of the United States.

Firm Price:

The price(s) specified on the face of the purchase order and/or the change order is firm, and may not be increased or supplemented on the “contractor’s” invoice.

Force Majeure:

Timely performance by the “contractor” is essential to this Contract. However, the “contractor” will not be liable for delays in performing its obligations to the extent such delays are caused by unforeseeable conditions that are beyond the “contractor’s” reasonable control, and that are without “contractor’s” fault or negligence, subject to the following provisions: Acts of God such as storms or floods, as well as judicial restraints, acts of law-enforcement or military authorities, fires, epidemics, war or riot are examples of events that might be excusable as being beyond the “contractor’s” reasonable control: however, no time extension because of an excusable shall ever be allowed unless: (a) within seven (7) calendar days of the commencement of any excusable delay, “contractor” shall provide “City” with written notice of the cause and extent thereof as well as a request for a time extension equal to the estimated duration thereof; and (b) within seven (7) calendar days of the cessation of the event causing delay, “contractor” shall provide “City” with written notice of the actual delay incurred, upon receipt of which, the time for “contractor’s” performance shall be extended for the time actually lost by reason of an excusable delay.

Indemnification:

“CONTRACTOR” COVENANTS AND WARRANTS THAT IT WILL PROTECT, DEFEND, AND HOLD HARMLESS THE “CITY”, ITS EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “CITY”) FROM ANY AND ALL THIRD PARTY CLAIMS, DEMANDS, AND LIABILITY, INCLUDING DEFENSE COSTS, RELATING IN ANY WAY TO DAMAGES, CLAIMS, OR FINES ARISING BY REASON OF OR IN CONNECTION WITH “CONTRACTOR’S ACTUAL OR ALLEGED NEGLIGENCE OR OTHER ACTIONABLE PERFORMANCE OR OMISSION OF THE “CONTRACTOR” IN CONNECTION WITH OR DURING THE PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. “CONTRACTOR” FURTHER COVENANTS AND AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS THE “CITY” FROM ALL CLAIMS, ALLEGATIONS, FINES, AND DAMAGES RELATING IN ANY WAY TO THE ACTUAL OR ALLEGED JOINT AND/OR CONCURRENT NEGLIGENCE OF THE “CITY” AND “CONTRACTOR”, WHETHER THE “CONTRACTOR” IS IMMUNE FROM LIABILITY OR NOT.

PURCHASE ORDER TERMS AND CONDITIONS: (Continued)

IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO, THAT THE INDEMNITY PROVIDED HEREIN IS AN AGREEMENT BY THE "CONTRACTOR" TO INDEMNIFY AND PROTECT THE "CITY" FROM THE CITY'S OWN NEGLIGENCE WHERE SAID NEGLIGENCE IS AN ALLEGED OR ACTUAL CAUSE OF ANY ALLEGED THIRD-PARTY HARM.

THE INDEMNITY PROVISION PROVIDED HEREIN SHALL HAVE NO APPLICATION TO ANY CLAIM OR DEMAND WHERE BODILY INJURY, DEATH, OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF THE "CITY", UNMIXED WITH ANY FAULT OF ANOTHER PARTY OR ENTITY, INCLUDING THE "CONTRACTOR".

NOTWITHSTANDING, ANYTHING HEREIN TO THE CONTRARY, THE LIABILITY OF THE "CONTRACTOR" UNDER THIS INDEMNITY PROVISION SHALL NOT EXCEED \$600,000 PER OCCURRENCE.

Independent "contractor":

In performing its obligations under this Contract, the "contractor" shall act as an independent "contractor" solely for his own account and not as an agent, representative or employee of the "City". No employee, agent, or representative of the "contractor" shall be considered an employee of the "City" nor be eligible for any benefits, rights or privileges afforded to "City" employees.

Invoices and Payment:

The City of Houston's standard payment term is to pay 30 days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Tx. Gov't Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from Contractor as follows:

- Payment Time – 10 Days: 2% Discount
- Payment Time – 20 Days: 1% Discount

If the City fails to make a payment according to the early payment schedule above, but does make the payment within the time specified by the Prompt Payment Act, the City shall not receive the discount, but shall pay no other penalty. When the payment date falls on a Saturday, Sunday, or official holiday when City offices are closed and City business is not expected to be conducted, payment may be made on the following business day.

The "contractor" shall submit an invoice to the addresses specified on the purchase order and/or change order, no later than thirty (30) days after the date of receipt of the item(s) or service(s) by the "City". At a minimum, each invoice will contain the:

1. Purchase order number;
2. "Contractor's" name and address;
3. Description of the item(s) delivered;
4. Exact quantity of each item delivered;
5. Date of delivery to the "City";
6. Unit price for each item, if a unit price was offered by the "contractor";
7. Total amount of the charge(s) for the item(s) delivered, which amount shall not exceed the amount of the purchase order; and the
8. Name of the City Department that requested the item(s) or service(s).

The "City" shall pay the "contractor" either the lump sum for the item(s) or, if unit prices are specified, the unit price per item for each item multiplied by the number of units actually delivered and received and accepted by the "City". The "City" shall never be obligated to pay a sum greater than the segregate price offered for the item(s). The unit price shall control in the event of a conflict. Payment is due thirty (30) days after the "City" has approved the invoice or after the "City" has accepted the goods, whichever occurs later.

PURCHASE ORDER TERMS AND CONDITIONS: (Continued)

Rejection:

In the event the "City" rejects any item(s), the "contractor" shall have ten (10) days after receipt of notice of such rejection to replace any item(s) with replacements which conform to this Contract, at no additional cost to the "City".

"Sub-contractors" and Suppliers:

If the "contractor" receives payment from the "City" for work performed by any "sub-contractor(s)", or for materials provided by any "supplier(s)", and the "contractor" withholds or has withheld payment to the "sub-contractor(s)" or "supplier(s)" on account of a deficiency in the quality or quantity of that "sub-contractor's" or "supplier's" work or materials, the "City" may withhold the amount associated with such work or materials from any pending or future payments to the "contractor" until the next regular payment to the "contractor" occurring after the "City" receives reasonable documentation that the deficiency has been remedied.

Successors and Assigns:

This Contract shall bind and benefit the respective parties and their legal successors, and shall not be assignable, in whole or in part, by any party hereto without first obtaining the written consent of the other party. This provision is not intended to limit the "contractor's" ability to assign receivables under this Contract, but only applies to performance of the Contract. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the "City".

Tax Exempt Status:

The "City" is exempt from the Federal Excise and Transportation Tax, and the limited Sales and Use Tax. Unless the "City" of Houston Bid Form or specifications specifically indicates otherwise, the price bid must be net exclusive of above mentioned taxes. A "Contractor" desiring refunds of, or exemptions from taxes paid on the item(s) accepted by the "City", must submit the proper forms, and the City of Houston Purchasing Agent, if satisfied as to the facts, and will issue the necessary certificate.

Warranties – Guarantees:

The "contractor" warrants that each item delivered will (1) be new (unless otherwise specified on the face of the purchase order, change order or specifications), free from liens and defects in design, materials, workmanship and defects in title (including any defect in the "contractor's" right to sell a patented or copyrighted product or to use a patented process), (2) conform in all respects to the terms of the purchase order, change order or specifications, and (3) be of the best quality, if no specific quality is established in the specification(s). If within one (1) year from the date of acceptance by the "City", it appears that an item, or any commercial unit thereof, does not conform to these warranties, and the City of Houston Purchasing Agent notifies the "contractor" within a reasonable amount of time after discovery, the "contractor" shall correct such nonconformity to the satisfaction of the City of Houston Purchasing Agent at the "contractor's" expense.

Should this occur, the "City" may revoke acceptance, and purchase substitute item's correcting the nonconformity. The cost of the substitute item(s) correcting any nonconforming item(s) shall be borne by the "contractor".

Additionally, the "contractor" shall transfer to the "City" any manufacturer's warranty that it has for the item(s).

PURCHASE ORDER TERMS AND CONDITIONS: (Continued)

Insurance:

Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement/purchase order. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

- Commercial General Liability insurance including Contractual Liability insurance:
\$500,000 per occurrence; \$1,000,000 aggregate
- Workers' Compensation including Broad Form All States endorsement:
Statutory amount
- Automobile Liability insurance:
\$1,000,000 combined single limit per occurrence
Defense costs are excluded from the face amount of the policy
Aggregate Limits are per 12-month policy period unless otherwise indicated
- Employer's Liability:
Bodily injury by accident \$100,000 (each accident)
Bodily injury by disease \$100,000 (policy limit)
Bodily injury by disease \$100,000 (each employee)

PURCHASE ORDER TERMS AND CONDITIONS: (Continued)

All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, Contractor shall give written notice to the Director if any of its insurance policies are cancelled, materially changed or non-renewed. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his/her or sole discretion, may:

- Immediately suspend Contractor from any further performance under this Agreement/purchase order and begin procedures to terminate for default.
- All certificates of insurance submitted by Contractor shall be accompanied by endorsements for additional insured coverage in favor of the City for Commercial General Liability and Automobile Liability policies; and waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and Worker's Compensation/Employers' Liability policies. For a list of pre-approved endorsement, forms see [forms.shtml](#). The Director will consider all other forms on a case-by-case basis.
- **NOTE: INSURANCE IS NOT REQUIRED IF ITEM IS DROP-SHIPED BY MANUFACTURER OR IS DELIVERED BY COMMON CARRIER.**

PURCHASE ORDER TERMS AND CONDITIONS: (Continued)

Termination of Agreement:

By the City for Convenience:

The City Purchasing Agent may terminate this Agreement/Purchase Order at any time upon 30-calendar days notice in writing to the Contractor. Upon receipt of such notice, the Contractor shall, unless the notice directs otherwise, discontinue all services in connection with the performance of the Agreement/Purchase Order and shall proceed to cancel promptly all existing orders and Agreement/Purchase Orders insofar as such orders and Agreement/Purchase Orders are chargeable to this Agreement/Purchase Order. As soon as practicable after the receipt of notice of termination, the Contractor shall submit a statement to the appropriate department(s) showing in detail the services performed or items delivered under this Agreement/Purchase Order to date of termination. The City agrees to compensate the Contractor for that portion of the prescribed charges for which the services were actually performed or items delivered under this Agreement/Purchase Order and not previously paid.

By the City for Default by the Contractor:

- In the event that the materials and/or services furnished by the Contractor do not conform to the standard set forth herein, or if the deliveries and servicing of this Agreement/Purchase Order do not conform to the requirements detailed herein, the City through a written notice from the City Purchasing Agent to the Contractor describing such default may as its options:
- Terminate the Agreement/Purchase Order for default and the City shall have no further obligation under the Agreement/Purchase Order.
- Allow the Contractor to cure default within a reasonable time as specified in the notice. The City, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, the Contractor cures such default to the City's satisfaction, then the proposed termination shall be ineffective. If the Contractor fails to cure such default prior to the proposed date of termination, then the City may terminate its performance under this Agreement/Purchase Order as of such date and have no further obligation under the Agreement/Purchase Order.
- In the event of failure to deliver any or all of the items or to perform required services, the City may cover its loss by reasonably procuring from another source the items not delivered or the services not performed. The Contractor shall be responsible for and shall pay to the City immediately upon demand the difference in price between that offered by the Contractor and that which the City was forced to pay for covering the Contractor's failure to deliver or perform services.

By the Contractor for Default by the City:

- Default by the City shall occur if the City fails to perform or observe the terms and conditions of this Agreement/Purchase Order required to be performed or observed by the City, and the Contractor gives notice in writing to the City within 30 calendar days of the act or omission claimed by the Contractor to constitute default on the part of the City.
- Upon receipt of such notice in writing from the Contractor, however, the City shall have 30 calendar days to cure such default. The Contractor, at its sole option, may extend the proposed date of termination to a later date.
- If City cures such default prior to the proposed date of termination, the proposed termination shall be ineffective. If the City fails to cure such default prior to the proposed date of termination, then the Contractor may terminate its performance under this Agreement/Purchase Order as of such

PURCHASE ORDER TERMS AND CONDITIONS: (Continued)

Request For Quotation Terms & Conditions:

- All prices quoted shall be made on the form(s) provided by the City of Houston. The use of other forms will not be considered unless you specifically indicate otherwise.

By submitting a response to the City of Houston, you certify that all items to be furnished to the City of Houston, will not infringe any valid patent or trademark, and if you receive a purchase or contract from the City of Houston, you will (at your own expense) defend any and all actions of suits charging such infringement and save the City of Houston harmless in case of any such infringement.

- When a brand or trade name appears in any specification(s) provided by the City of Houston, it is understood that the brand or trade name referred to, or its approved equal shall be furnished. If, however, you propose similar but not identical items, you must furnish full particulars. If no mention is made of any exception(s), it is assumed that you are offering the item(s) specified and not an approved equal, and will be required to furnish and deliver the exact item(s) specified.
- You are required to submit with your response, descriptive literature of equipment or supplies, if the equipment or supplies is from a different manufacturer than those specified by the City of Houston. Should the description(s) furnished in the literature differ from the specification(s) specified by the City of Houston, and no mention is made to the contrary, it shall be construed to mean that you propose to furnish equipment or supplies in accordance with such description(s) and not in accordance with the City's specification(s).
- If requested by the City of Houston, samples of items shall be furnished without charge, and if not destroyed, returned upon request at your expense.
- Time of proposed delivery should be stated in number of calendar days. General terms such as "stock", "immediately", and "as soon as possible", may be cause for rejection.
- Prices should be itemized. The City of Houston reserves the right to award by item or by total bid. In case there is a discrepancy between the unit price(s) and the extension(s), the unit price(s) shall govern.
- The City of Houston reserves the right to reject any or all quotes, or any part(s) thereof.
- The City of Houston is exempt from all Federal Excise Taxes. Consequently, **DO NOT** include these taxes in your price(s) or invoice(s). Taxable items must be so designated, and the City will supply you with a Tax Exemption Certificate. If you believe that certain taxes are payable by the City of Houston, you should list the taxes directly below each item.
- All prices quotes shall be F.O.B. Destination unless otherwise stated by the City of Houston, and will be irrevocable for ninety (90) days.
- All invoices shall be submitted to the address listed on the City of Houston purchase order.
- If you elect not to respond to the solicitation, please sign and indicate that on the solicitation, and return it to return the Buyer along with the reason(s).
- Submission or attachment of QUOTATION FORMS containing your terms and/or conditions is not acceptable, and may result in your response being considered non-responsive.
- The City of Houston's standard payment term is to pay 30 days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Tx. Gov't Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from Contractor as follows:

PURCHASE ORDER TERMS AND CONDITIONS: (Continued)

- Payment Time – 10 Days: 2% Discount
- Payment Time – 20 Days: 1% Discount
- A Contractor may elect not to offer a discount for early payment and the City will make payment net 30 days. Discounts will not be considered in the award evaluation.
- If the City fails to make a payment according to the early payment schedule above, but does make the payment within the time specified by the Prompt Payment Act, the City shall not receive the discount, but shall pay no other penalty. When the payment date falls on a Saturday, Sunday, or official holiday when City offices are closed and City business is not expected to be conducted, payment may be made on the following business day.

Outline Agreement Terms & Conditions:

The terms and conditions specified in the bid will apply to the outline agreement. The quantities specified on the outline agreements is an **estimate**, consequently, the City of Houston makes no representation either orally or in writing as to the quantity of items that may be purchased from the Contractor.

Zero Tolerance Policy For Human Trafficking And Related Activities:

The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in [Executive Order 1-56](#), as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Agreement's effective date. Contractor shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Contractor or its subcontractors providing services or goods under this Agreement within 7 days of Contractor becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

Compliance with Certain State Law Requirements

Anti-Boycott of Israel. Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

Anti-Boycott of Energy Companies. Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.

Anti-Boycott of Firearm Entities or Firearm Trade Associations. Contractor certifies that Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.

Certification of No Business with Foreign Terrorist Organizations. For purposes of Section 2252.152 of the Texas Government Code, Contractor certifies that, at the time of this Purchase Order neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code as a company known to have contracts with or provide supplies to a foreign terrorist organization.

EXHIBIT 6

FEDERAL PROVISIONS

Version 09/20/2022

GENERAL FEDERAL REQUIREMENTS APPLICABLE TO AGREEMENTS, ADDENDA, AND PURCHASE ORDERS INVOLVING FEDERAL FUNDS (“GENERAL FEDERAL REQUIREMENTS”)

Contractor must comply with the following federal provisions, as applicable, as a condition of this City of Houston (“City”) Agreement. For purposes of this **Exhibit 6**, the following terms have the meanings set forth in this Exhibit.

- “Agreement” means the Agreement, Addendum, or Purchase Order to which this **Exhibit** is attached.
- “Contractor” means Contractor or Contractor as defined in the Agreement to which this **Exhibit 6** is attached.
- “Federal Agency” means any relevant federal agency overseeing or administering the funding set forth in the Agreement to which this **Exhibit** is attached as a source of funding.

Contractor also acknowledges that the City is using federal funds attached to a federal program (“Program”) for all or a portion of this Agreement. Contractor therefore shall, in addition to those set forth in this Exhibit, comply with any specific terms and conditions or websites required by the CPO, and any specific terms and conditions set forth in the grant as specified by the CPO (“Funding Law, Regulations and Guidelines”).

Contractor also shall provide for compliance with the federal laws, rules, regulations, interpretive guidance and other materials set forth in this **Exhibit** in any agreements it enters into with other parties relating to the federal funds.

1. Contractor acknowledges that federal financial assistance will be used to fund all or a portion of this Agreement. Contractor shall comply with all applicable federal law, regulations, executive orders, federal policies, procedures and directives as well as any guidance issued by Federal Agency relating to the Program and Funding Law, Regulations and Guidelines. Federal regulations applicable to this funding include but are not limited to the following:
 - a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
 - b. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference
 - c. Generally applicable federal environmental laws and regulations
2. Contractor acknowledges that the Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from this Agreement.
3. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Contractor’s actions pertaining to this Agreement. False statements or claims may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.
4. Use of Funds. Contractor understands and agrees that the funds disbursed under this funding may only be used for the Program and in compliance with the Program and the Funding Law, Regulations and Guidelines.
5. Award Amount. The amount of funding dedicated to this Agreement is limited to the amount set out in the attached Agreement, unless otherwise agreed to by the Parties, in writing.

FEDERAL PROVISIONS: (Continued)

6. Period of Performance. The Period of Performance of this Agreement will begin on the countersignature date of the City Controller on the Agreement, or in the case of Purchase Orders on the date of issuance of the Purchase Order by the City, which must be after the Contractor signs this Exhibit, and conclude on or before the ending date of the grant, unless the grant is extended and the Parties mutually agree to an extension under the Agreement.
7. Contractor shall not use the Department of Homeland Security (DHS) or any Federal Government or Federal Agency seal(s), logos, crests, or reproductions of flags or likenesses of DHS or any Federal Government or Federal Agency officials without specific DHS or any Federal Government or Federal Agency pre-approval.
8. Access to Records. The following access to records requirements apply to this Agreement:
 - a. Contractor agrees to provide the City, any Federal Agency Administrator, the Texas Department of Emergency Management, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor shall keep its books, documents, papers, and records available for this purpose for at least seven years after this Agreement terminates or expires. This provision does not limit the applicable statute of limitations.
 - b. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - c. Contractor agrees to provide the Federal Agency or its authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement.
 - d. In compliance with the Disaster Recovery Act of 2018, the City and Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the Federal Agency or its authorized representatives or the Comptroller General of the United States.
 - e. Within ten days of written request by the City, Contractor agrees to provide the City all relevant documentation pertaining to the Program and this Agreement to confirm compliance with Federal requirements, ensure the Program is achieving its purpose, and to respond to audits, as necessary.
9. Environmental Compliance – Applicable only to Agreements over \$150,000.
 - a. Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251 et seq.).
 - b. Contractor shall report all violations to the City's Purchasing Agent/Chief Procurement Office or designee (CPO), and understands and agrees that the City, through its designated representative, will, in turn, report each violation as required to assure notification to the Federal Agency, and the appropriate Environmental Protection Agency Regional Office.
 - c. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.
10. Contract Work Hours and Safety Standards Act – Applicable only to Agreements over \$100,000.
 - a. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

FEDERAL PROVISIONS: (Continued)

- b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (a) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.
 - c. Withholding for unpaid wages and liquidated damages. The federal agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.
 - d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.
11. Equal Employment Opportunity. During the performance of this Agreement, Contractor agrees as follows:
- a. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. "Contractor" will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
 - (1) Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - c. Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
 - d. Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

FEDERAL PROVISIONS: (Continued)

- e. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- h. Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or Contractor. Contractor will take such action with respect to any subcontract or purchase order as the Federal Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or Contractor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- i. The City further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.
- j. The City agrees that it will assist and cooperate actively with the Federal Agency, and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the Federal Agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering Federal Agency in the discharge of the City or Federal Agency's primary responsibility for securing compliance.
- k. The City further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the City agrees that if it fails or refuses to comply with these undertakings, the Federal Agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

FEDERAL PROVISIONS: (Continued)

12. Procurement of Recovered Materials.

- a. In the performance of this Agreement, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
 - i. Competitively within a timeframe providing for compliance with the Agreement performance schedule.
 - ii. Meeting Agreement performance requirements; or
 - iii. At a reasonable price.
- b. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- c. Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

13. Domestic Preference Requirements

- a. Domestic Preference Requirement – 2 C.F.R. §200.322
 - i. As appropriate and to the extent consistent with law, Contractor 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 requirements of this paragraph must be included in all subcontracts and purchase orders for work or products under this Agreement. For purposes of this paragraph:
 - 1. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - 2. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- b. Domestic Content Procurement Preference Requirement for Infrastructure Projects
 - i. For all infrastructure projects funded by Federal financial assistance, except for those funded by FEMA, Contractor shall comply with the domestic content procurement preference requirement and purchase, acquire, or use products meeting the domestic content procurement preference requirement. For purposes of this paragraph:
 - 1. “Domestic Content Procurement Preference” means that (A) all iron and steel used in the project are produced in the United States; (B) the manufactured products used in the project are produced in the United States; or (C) the construction materials used in the project are produced in the United States. The requirements of this paragraph must be included in all subcontracts and purchase orders for work or products under this Agreement.
 - 2. “Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States— (A) roads, highways, and bridges; (B) public transportation; (C) dams, ports, harbors, and other maritime facilities; (D) intercity passenger and freight railroads; (E) freight and intermodal facilities; (F) airports; (G) water systems, including drinking water and

FEDERAL PROVISIONS: (Continued)

3. Wastewater systems; (H) electrical transmission facilities and systems; (I) utilities; (J) broadband infrastructure; and (K) buildings and real property.
 4. “Produced in the United States” means—
 - a. in the case of iron or steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
 - b. in the case of manufactured products, that— (i) the manufactured product was manufactured in the United States; and (ii) the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
 - c. in the case of construction materials, that all manufacturing processes for the construction material occurred in the United States.
 5. “Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.
14. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment
- a. As used in this paragraph, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services.
 - b. Prohibitions
 - i. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after August 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
 - ii. Unless an exception in this paragraph applies, Contractor and its Subcontractors shall not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Agency to:
 1. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 2. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 3. Enter into, extend, or renew contracts with entities 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; or
 4. Provide, as part of its performance of this Agreement, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

FEDERAL PROVISIONS: (Continued)

- c. Exceptions
 - i. This paragraph does not prohibit contractors, such as Contractor, from providing—
 - 1. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - 2. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
 - ii. By necessary implication and regulation, the prohibitions also do not apply to:
 - 1. Covered telecommunications equipment or services that:
 - a. Are not used as a substantial or essential component of any system; and
 - b. Are not used as critical technology of any system.
 - 2. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
 - 3. That which 2 C.F.R. Section 200.216 does not apply.
 - d. Reporting requirement
 - i. In the event Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during performance of the Services set forth in this Agreement, or Contractor is notified of such by a Subcontractor at any tier or by any other source, Contractor shall report the information in the manner stated below to the recipient or subrecipient, unless elsewhere in this Agreement are established procedures for reporting the information.
 - ii. Contractor shall report the following information pursuant to paragraph (e):
 - 1. Within one business day from the date of such identification or notification: The Contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - 2. Within 10 business days of submitting the information above: Any further available information about mitigation actions undertaken or recommended. In addition, Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
 - e. Subcontracts. Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.
15. Remedies. If any work performed and/or goods delivered by Contractor fails to meet the requirements of the Agreement, any other applicable standards, codes or laws, or otherwise breaches the terms of the Agreement, the CPO may in his or her sole discretion:

FEDERAL PROVISIONS: (Continued)

- a. elect to have Contractor re-perform or cause to be re-performed, at Contractor's sole expense, any of the work which failed to meet the requirements of the contract;
- b. in the case of goods, reject the goods and require Contractor to provide replacement goods that meet the needs of the City and the terms of the Agreement;
- c. hire another contractor to perform the work and deduct any additional costs incurred by the City as a result of substituting contractors from any amounts due to Contractor; or
- d. pursue and obtain any and all other available legal or equitable remedies.

This Section shall in no way be interpreted to limit the City's right to pursue and obtain any and all other available legal or equitable remedies against Contractor.

16.0 Suspension and Debarment.

- a. Federal regulations restrict the City from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. Contractor can verify its status and the status of its principals, affiliates, and subcontractors at www.SAM.gov.
- b. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000 and, if applicable, 45 C.F.R. § 75.213. As such, Contractor is required to verify that none of its principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- c. Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. § 75.213, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- d. This certification, found in Exhibit 1, is a material representation of fact relied upon by the State of Texas and the City. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. § 75.213, in addition to remedies available to the State of Texas and the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- e. Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. § 75.213, while this offer is valid and throughout the period of this purchase order. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

17.0 Byrd Anti-Lobbying Amendment.

- a. A contractor who applies or bids for an award or receives a Contract/Purchase Order of \$100,000 or more shall submit to the City's Chief Procurement Officer or designee the required certification as set out in Exhibit 2 of this Agreement. Each tier certifies 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 shall 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 recipient who in turn will forward the certification(s) to the awarding agency.

FEDERAL PROVISIONS: (Continued)

- 18.0 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.
- a. If Contractor intends to subcontract any portion of the work covered by this Agreement, Contractor must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:
 - i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
 - v. 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.
- 19.0 Davis-Bacon Act – Applicable to Contracts/Purchase Orders for construction work in excess of \$2,000.00 and not funded by FEMA-PA Program.
- a. All transactions regarding this Contract/Purchase Order shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
 - b. Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
 - c. Additionally, Contractor is required to pay wages not less than once a week.
- 20.0 Copeland "Anti-Kickback" Act – Applicable to Contracts/Purchase Orders for construction work in excess of \$2,000.0 and when the Davis-Bacon Act also applies.
- a. Contractor. Contractor shall comply with 18 U.S.C. §874, 40 U.S.C. §3145 and the requirements of 29 C.F.R. part 3 as may be applicable, which are incorporated by reference to this Agreement.
 - b. Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the City or the Federal Agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
 - c. Breach. A breach of the contract clauses above may be grounds for termination of this Agreement, and for debarment as a contractor and subcontractor as provided in 29 U.S.C. § 5.12.
- Changes. The Director may modify the scope of services or quantity and type of goods by giving written notification to Contractor, subject to the funds allocated by the City to this Agreement. The notice takes effect immediately upon receipt by Contractor.

FEDERAL PROVISIONS: (Continued)

21. Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Contractor may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Treasury employee responsible for contract or grant oversight or management;
 - v. An authorized official of the Department of Justice or other law enforcement agency;
 - vi. A court or grand jury; or
 - vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- c. Contractor shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

22.0 Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is encouraged to adopt and enforce on-the-job seat belt policies and programs for its employees when operating Contractor-owned, rented, or personally-owned vehicles.

23.0 Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Contractor is encouraged to adopt and enforce policies that ban text messaging while driving.

24.0 Publications. Any publications produced with funds from this award must display the following language noting the funds for the project came from federal funds.

Any publications produced with funds from this award or pertaining to projects or programs administered with funds from this award must be approved by the City prior to publication.

25.0 Debts Owed to the City.

- a. Any funds paid to Contractor (1) in excess of the amount to which Contractor is finally determined to be authorized to retain under the terms of its award from Treasury; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by the Contractor shall constitute a debt to the City and to the Federal government.
- b. Any debts determined to be owed the City must be paid promptly by Contractor for repayment to the federal government.
- c. A debt is delinquent if it has not been paid by the date specified in the City's initial written demand for payment, unless other satisfactory arrangements have been made or if the Contractor knowingly or improperly retains funds that are a debt as defined in this paragraph. The City will take any actions available to it to collect such a debt.

FEDERAL PROVISIONS: (Continued)

- 26.0 **Disclaimer.** The United States expressly disclaims any and all responsibility or liability to Recipient and Contractor or third persons for the actions of Recipient, Contractor, or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award. The acceptance of this award by Recipient and Contractor does not in any way establish an agency relationship between the United States and Recipient or Contractor.
- 27.0 Contractor understands that the City's obligation for payment under this Agreement is limited in its entirety by the provisions of this Agreement for the performance of services under this Agreement; unless additional funds are approved by City Council through supplemental allocations to pay for the services, the City shall have no obligation to pay Contractor. Contractor must look to these designated funds only and to no other funds for the City's payment under this Agreement, and that the City is permanently excused from making payments due under this Agreement if, for whatever reason, there is a lack of funds.

ADDITIONAL REQUIREMENTS IF AGREEMENT IS FUNDED BY AMERICAN RESCUE PLAN ACT FUNDS:

In addition to the General Federal Requirements listed above, if this Agreement is funded using Coronavirus Local Fiscal Recovery Funds ("CLFRF Fund"), which were established by the American Rescue Plan Act of 2021, Contractor shall comply with all procurement requirements, laws, regulations, and interpretative guidance relating to the American Rescue Plan Act of 2021, including but not limited to the requirements listed below, and these requirements will flow down to any agreements Contractor enters into with other parties relating to these funds.

1. **Civil Rights Compliance.** Contractor shall not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 C.F.R. part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 C.F.R. part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 C.F.R. part 23. Contractor is deemed to have read and understands the requirements of each of the following, if applicable to the project under this Agreement:
 - Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d et seq.); 24 C.F.R. Part I, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";
 - Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e, et seq.);
 - Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. § 3601, et seq.), as amended;
 - Executive Order 11063, as amended by Executive Order 12259, and 24 C.F.R. Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063"; The failure or refusal of Contractor to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;
 - The Age Discrimination Act of 1975 (42 U.S.C. § 6101, et seq.); and
 - Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794.) and
 - "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development", 24 C.F.R. Part 8.

FEDERAL PROVISIONS: (Continued)

- The Americans with Disabilities Act (42 U.S.C. §12131; 47 U.S.C. §§155, 201, 218, and 225);
- By signing this Agreement, Contractor understands and agrees that the activities funded shall be performed in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, et seq.), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system.

ADDITIONAL REQUIREMENTS IF AGREEMENT IS FUNDED BY U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FUNDS:

In addition to the General Federal Requirements listed above, if this Agreement is funded using funds from the U.S. Department of Housing and Urban Development (“HUD”), Contractor shall comply with all procurement requirements, laws, regulations, and interpretative guidance relating to the respective HUD program, including but not limited to program requirements found in 24 C.F.R. Part 570 (CDBG), 24 C.F.R. 92 (HOME), 24 C.F.R. Part 574 (HOPWA), 24 C.F.R. Part 576 (Emergency Solutions Grant) and the requirements listed below, and these requirements will flow down to any agreements Contractor enters into with other parties relating to these funds.

1. Civil Rights Compliance. Contractor shall not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department’s implementing regulations, 31 C.F.R. part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department’s implementing regulations, 31 C.F.R. part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 C.F.R. part 23. Contractor is deemed to have read and understands the requirements of each of the following, if applicable to the project under this Agreement:
 - a. title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d et seq.); 24 C.F.R. Part I, “Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964”;
 - b. Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e, et seq.);
 - c. Title VIII of the Civil Rights Act of 1968, “The Fair Housing Act of 1968” (42 U.S.C. § 3601, et seq.), as amended;
 - d. Executive Order 11063, as amended by Executive Order 12259, and 24 C.F.R. Part 107, “Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063”; The failure or refusal of Contractor to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;
 - e. The Age Discrimination Act of 1975 (42 U.S.C. § 6101, et seq.); and
 - f. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794.) and
 - g. “Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development”, 24 C.F.R. Part 8.
 - h. The Americans with Disabilities Act (42 U.S.C. §12131; 47 U.S.C. §§155, 201, 218, and 225);
 - i. By signing this Agreement, Contractor understands and agrees that the activities funded shall be performed in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, et seq.), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system

FEDERAL PROVISIONS: (Continued)

2. National Flood Insurance Program.
 - a. If applicable, this Agreement is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234) for areas identified by HUD as having special flood hazards. The use of any funds provided for acquisition or construction in identified areas shall be subject to the Mandatory Purchase of Flood Insurance requirements of section 102(a) of said act.
 - b. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared, or improved with assistance provided under this Agreement shall contain, if the land is located in an area identified by HUD as having a special flood hazard, provisions which obligate the transferee and its successors or assigns to obtain and maintain, during the life of the project, flood insurance as required under section 102(a) of the Flood Disaster Protection Act of 1973, as amended. These provisions shall be required notwithstanding the fact that the construction on the land is not itself funded with funds provided under this Agreement.
3. Displacement, Relocation, Acquisition and Replacement of Housing
 - a. Contractor understands that projects funded hereunder may be subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. §4601-4655), as applicable; and those individuals or businesses that are required to move from real property, permanently or involuntarily as a direct result of rehabilitation, demolition, or acquisition for the project assisted hereunder must be compensated pursuant to the URA.
4. Section 3 of the Housing and Urban Development Act of 1968
 - a. Compliance with the provisions of Section 3 of the Housing and Urban Development Act of 1968, Pub. L. 90-448, 82 Stat. 476 (codified as amended at 12 U.S.C. 1701u) and as implemented by the regulations set forth in 24 CFR Part 75, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon any Contractors, subrecipients, and subcontractors. Failure to fulfill these requirements shall subject any Contractors, subrecipients, and subcontractors, their successors and assigns, to those sanctions specified by this Agreement through which Federal assistance is provided.
 - b. Contractors agree to include the following language in all subcontracts executed under this Agreement: "The work to be performed under this Agreement is subject to the requirements of Section 3 of the Department of Housing and Urban Development (HUD). Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. §1701u, "Section 3") and implementing regulations at 24 C.F.R. Part 75 apply to the Agreement. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted developments covered by Section 3 shall, to the greatest extent feasible, be directed to low and very low-income persons, including persons who are recipients of HUD assistance for housing, with a preference for both targeted workers living in the service area or neighborhood of the Development and YouthBuild participants, as defined at 24 CFR Part 75 ("Section 3 Regulations")."
 - c. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 USC §1701u) ("Section 3"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted developments covered by Section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, including persons who are recipients of HUD assistance for housing, with a preference for both targeted workers living in the service area or neighborhood of the Development and YouthBuild participants, as defined at 24 CFR Part 75 ("Section 3 Regulations").
 - d. Contractor agrees to comply with HUD's regulations in Section 3 Regulations, which implement Section 3. As evidenced by their execution of this Contract, the Contractor certifies that they are under no contractual or other impediments that would prevent them from complying with the Section 3 Regulations.

FEDERAL PROVISIONS: (Continued)

- e. Contractor shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause and shall post copies of the notice in conspicuous places at the worksite where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference and shall set forth the following: (i) minimum number and job titles subject to hire, (ii) availability of apprenticeship and training positions, (iii) qualifications for each, (iv) name and location of the person(s) taking applications for each of the positions, and (v) the anticipated date the work shall begin.
 - f. Contractor will include or have included a Section 3 clause in every subcontract subject to compliance with regulations in Section 3 Regulations and agrees to take appropriate action, as provided in an applicable provision of the subcontract in this Section 3 clause, upon a finding that the subcontractor violates the regulations in Section 3 Regulations. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in Section 3 Regulations.
 - g. The Contractor will certify that any vacant employment positions, including training positions, that are filled (i) after a contractor is selected but before the Agreements executed, and (ii) with persons other than those to whom the regulations of Section 3 Regulations require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under Section 3 Regulations
 - h. Noncompliance with HUD's regulations in Section 3 Regulations may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
5. Lead-Based Paint Poisoning Prevention Act. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§ 4851-4856), and the implementing regulations at 24 C.F.R. Part 35, Subparts A, B, J, K and R may apply to activities under the Contract.
6. Uniform Administrative Requirements, Cost Principles and Audit Requirements. Contractor shall comply with "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards" as set forth under 2 C.F.R. Part 200, as applicable.
7. Conflict of Interest
- a. In the procurement of supplies, equipment, construction, and services by the City or a subrecipient, the conflict of interest provisions in 2 C.F.R. Part 200, Subpart B - General Provisions, shall apply.
 - b. In all cases not governed by 2 C.F.R. Part 200, Subpart B, the provisions of this section shall apply. Such cases include, but may not be limited to, the acquisition and disposition of real property and the provision of assistance by the recipient, by its subrecipients, or to individuals, businesses or other private entities under eligible activities which authorize such assistance (e.g. rehabilitation, preservation, and other improvements of private properties or facilities).
 - i. No persons described in paragraph (ii) (below) who exercise or have exercised any functions or responsibilities with respect to federal activities or who are in a position to participate in a decision-making process or gain inside information with regard to federal assisted activities, may obtain a personal or financial interest or benefit from, or have any interest in any contract, subcontract, or agreement or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter with respect to the federal assisted activity, or with respect to the proceeds of the federal assisted activity.
 - ii. The requirements of paragraph (i) apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, of any designated public agency, contractor, or subrecipient which receives funds under the federal grant.

FEDERAL PROVISIONS: (Continued)

8. Eligibility of Aliens Not Lawfully Present in U.S. Contractor understands that aliens not lawfully present in the U.S., as described in 49 C.F.R. §24.208, are not eligible to apply for benefits under certain federal activities.
9. Architectural Barriers Act. The Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 C.F.R. §40.2 or the definition of "building" as defined in 41 C.F.R. §101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 C.F.R. Part 40 for residential structures, and Appendix A to 41 C.F.R. Part 101-19, Subpart 10119.6, for general type buildings).
10. Records for Audit Purposes. Without limitation to any other provision of the foregoing Agreement/Contract, Contractor shall maintain all records concerning the program or project financed under this Agreement which the City reasonably requires from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient pursuant to 2 C.F.R. §200.333. Contractor shall maintain records required by 24 C.F.R. §135.92 for the period required under 2 C.F.R. §200.333. Contractor will give the City, HUD, the Comptroller General of United States, the General Accounting Office, or any of their authorized representatives access to and the right to examine, copy, or reproduce all records pertaining to the acquisition and construction of the project and the operation of the program or project. The right to access shall continue as long as the records are required to be maintained under 2 C.F.R. §200.336.
11. Audit Requirements.
 - a. Limited Scope Audit - Contractor understands that Non-Federal entities that expend less than \$750,000 a year in Federal awards are exempt from Federal audit requirements for that year, but records must be available for review and audit as described hereinabove at Section 17. Contractor further understands that limited scope audits can and may be required by the City for non-Federal entities that expend less than \$750,000. If the City requires such limited scope audits, same shall be performed in accordance with 2 C.F.R. Part 200, Subpart F - Audit Requirements.
 - b. Single Audit - Single Audit - Contractor further understands that non-Federal entities that expend \$750,000 or more a year in Federal awards shall have a single audit conducted pursuant to 2 C.F.R. Part 200, Subpart F - Audit Requirements, except when an election is made to have a program specific audit pursuant to and described in 2 C.F.R. Part 200, Subpart F - Audit Requirements. Once the Agreement is executed, Contractor understands that it is barred from considering such audit and must have a single audit conducted as described hereinabove.
12. Rights to Inventions made under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 C.F.R. §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 agreement," the recipient or subrecipient must comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
13. Energy Policy and Conservation Act. Contractor must comply 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 (42 U.S.C. §6201).
14. Procurement of Recovered Materials. See 2 C.F.R. §200.322.
15. Contractor shall not use HUD seal(s), logos, crests, or reproductions of flags or likenesses of HUD agency officials without specific the HUD's written pre-approval.