



MEMORANDUM

Date: May 11, 2021

To: Mayor and Town Council

Thru: Dylan O. Galloway, Town Administrator

From: Steve Brayman, Director of Public Works

Re: Woodworth Park Redevelopment

The Town of Cheverly's procurement ordinance (Sec. 28-2, C.) allows the Town Council to authorize a procurement it deems to be in the best interest of the Town:

Sec. 28-2 C. Nothing in this chapter shall be construed as prohibiting or limiting the Town Council's right to make appointments under the Town's Charter or to authorize any procurement it deems to be in the best interest of the Town, or the Town's right to employ its own personnel for the construction or reconstruction of public improvements or for any other purpose without competitive solicitation.

Houston-Galveston Area Council (H-GAC) is a recognized cooperative purchasing program that many Maryland political subdivisions use for competitive pricing for their playground development. This link [H-GAC Endusers](#) (need to specify Maryland) shows all the entities that have joined H-GAC for cooperative purchasing purposes. Also included in these agenda materials are contracts with both Anne Arundel County Government and M-NCPPC. The M-NCPPC contract has expired but shows that this local government entity has used the H-GAC program in the recent past. Playground Specialists, a Maryland business, was awarded the H-GAC Contract in November 2020. The H-GAC contract gives participating agencies a 6% to 10% discount on playground equipment. This contract includes playground equipment and will greatly assist with designing and installing a new accessible playground at Woodworth Park.

Previously at the April Town Worksession, Amanda McQuire, a Certified Inclusive Playground Equipment Designer with Playground Specialists, explained that they would participate in the necessary virtual community meetings to develop an acceptable design that has sufficient community support. Ms. McQuire also indicated that surveys could be developed to help gauge community support for any design proposals. Playground Specialists also have Certified Playground Safety Inspectors. Although there are no charges from Playground Specialists for design work, they perform these services with the expectation that they will be contracted to install the equipment.

Town staff proposes that the Town Council authorize the Town Administrator to execute any required documents to proceed with piggybacking on the H-GAC contract and utilizing Playground Specialists' awarded bid.



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This is in the Town's best interest for numerous reasons including but not limited to:

- Nationally bid contracts generally receive deeper discounts than local governments will receive on bidding small projects, including bidding one project such as Woodworth Park.
- Utilizing the H-GAC contract will expedite this project and allow for completion of the project in approximately 13 weeks past approval of design and executing all documents.
- Utilizing the H-GAC contract will create an efficiency for Town staff time during this continuing State of Emergency.
- Utilizing this H-GAC contract is a generally accepted local government procurement process and best practice for local governments to capitalize upon "bulk" pricing through nationally bid contracts and not duplicating efforts of a Town bid.
- This playground design will include community input and it is unlikely that a firm will design a playground with community input unless that firm is installing such playground, without additional design cost to the Town.
- Playground Specialists is willing to participate in community virtual meetings to design a playground that incorporates community input and stays within budget without additional design cost.

The Town Attorney has reviewed the enclosed materials and justification statement above and concurs that the Town's procurement ordinance allows for the Town Council to approve authorizing the Town Administrator to execute all necessary documents to utilize the H-GAC contract with Playground Specialists should the Town Council agree that it is in the Town's best interest to move forward in the fashion proposed by Town staff. Town staff believes that utilizing this language in the procurement ordinance and piggybacking on this contract will satisfy Program Open Space requirements. Program Open Space funds will be utilized to help with the costs of this project.

Therefore, Town staff recommends that the Town Council approve proceeding with the procurement as outlined above to secure the services of Playground Specialists to design (with community input) and install inclusive playground equipment at Woodworth Park. Please note that based upon some preliminary budget estimates for Program Open Space funding, this project may be funded in phases (likely two) to fully utilize available funding and allow for more playground options.

H-GAC

Houston-Galveston Area Council

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

Cooperative Agreement - Playground Specialists, Inc - Public Services - -ID: 5874 20-01335

GENERAL PROVISIONS

This Agreement is made and entered into, by and between the Houston-Galveston Area Council herein after referred to as H-GAC having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027 and Playground Specialists, Inc, hereinafter referred to as the Contractor, having its principal place of business at 29 Apples Church Road, Thurmont, MD 21788.

WITNESSETH:

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

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

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

ARTICLE 1: LEGAL AUTHORITY

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

ARTICLE 2: APPLICABLE LAWS

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

ARTICLE 3: INDEPENDENT CONTRACTOR

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

ARTICLE 4: WHOLE AGREEMENT

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

ARTICLE 5: SCOPE OF SERVICES

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

ARTICLE 6: PERFORMANCE PERIOD

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

ARTICLE 7: PAYMENT OR FUNDING

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

ARTICLE 8: REPORTING REQUIREMENTS

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

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

ARTICLE 9: INSURANCE

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

ARTICLE 10: SUBCONTRACTS and ASSIGNMENTS

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

ARTICLE 11: AUDIT

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

ARTICLE 12: EXAMINATION OF RECORDS

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

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

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

ARTICLE 13: RETENTION OF RECORDS

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

ARTICLE 14: CHANGES AND AMENDMENTS

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

ARTICLE 15: TERMINATION PROCEDURES

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

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

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

- B. *Default*

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

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

ARTICLE 16: SEVERABILITY

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

ARTICLE 17: FORCE MAJEURE

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

ARTICLE 18: CONFLICT OF INTEREST

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

ARTICLE 19: FEDERAL COMPLIANCE

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

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

ARTICLE 20: CRIMINAL PROVISIONS AND SANCTIONS

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

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

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

ARTICLE 21: INDEMNIFICATION AND RECOVERY

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

ARTICLE 22: LIMITATION OF CONTRACTOR'S LIABILITY

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

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

ARTICLE 23: TITLES NOT RESTRICTIVE

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

ARTICLE 24: JOINT WORK PRODUCT

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

ARTICLE 25: DISPUTES

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

ARTICLE 26: CHOICE OF LAW: VENUE

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

ARTICLE 27: ORDER OF PRIORITY

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

SIGNATURES:

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

Playgr[;Jip0ajalists, Inc

Signatur a' /3a../t>ev
65855E3415CE486...

Name Jeff Barber

Title President

Date 11/22/2020

H-GAC oocuSigned by:

Signatur 82EC270D5D61423...

Name Chuck Wemple

Title Executive Director

Date 11/20/2020

H-GAC

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

Cooperative Agreement - Playground Specialists, Inc - Public Services -

20-01335

SPECIAL PROVISIONS

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

ARTICLE 1: BIDS/PROPOSALS INCORPORATED

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

ARTICLE 2: END USER AGREEMENTS ("EUA")

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

ARTICLE 3: MOST FAVORED CUSTOMER CLAUSE

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

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

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

ARTICLE 4: PARTY LIABILITY

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

ARTICLE 5: GOVERNING LAW & VENUE

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

ARTICLE 6: SALES AND ORDER PROCESSING CHARGE

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

ARTICLE 7: LIQUIDATED DAMAGES

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

ARTICLE 8: INSURANCE

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

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

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

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

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

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

ARTICLE 9: PERFORMANCE AND PAYMENT BONDS FOR INDIVIDUAL ORDERS

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

ARTICLE 10: CHANGE OF STATUS

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

ARTICLE 11: TEXAS MOTOR VEHICLE BOARD LICENSING

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

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

FORM-H -- MARKETING & SUPPORT PLAN

ProcurementNo.: | PR11-20

Offeror: !Playground Specialists, Inc

Instructions: Reference Section-B

Playground Specialists , Inc has the capability and personnel to promote the HGACBuy contract and serve the H-GAC members. We have experienced staff that will be managing the details of the contract. To promote the contract our marketing team will send numerous email campaigns, mail-out campaigns, add a designated section for HGACBuy to our website and have flyers created to support the contract. Contract training is done at company sales meetings at our corporate office, training materials , and regular communication between the sales representatives and Playground Specialists sales manager. Training will be done via in person meetings, teleconferences, and webinars. Customer service has always been a core belief for our company. Our customer service team promptly responds to all communications and are able to service all requirements of the contract. ***A more detailed Form H Marketing & Support Plan is included in separate document

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|---|
| Attachment A |
| Playground Specialists, Inc. |
| Parks & Recreation Equipment |
| Contract No. PR11-20 |

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

| Product Code | Manufacturer | Description | Catalog Discount |
|---------------------|------------------------------------|---|-------------------------|
| PR11-20A06 | Berliner Seilfabrik Play Equipment | 2020 Berliner Seilfabrik and Urban Design Lines Catalog | 6.00% |
| PR11-20A10 | Classic Recreation Systems, Inc. | 2020 Classic Recreation Systems Shade and Shelter Equipment Catalog | 6.00% |
| PR11-20A36 | MyTCoat | 2020 MyTCoat Site Furnishings Catalog | 6.00% |
| PR11-20A40 | Paris Equipment Manufacturing Ltd. | 2020 Paris Site Furnishing and Outdoor Exercise Equipment Catalog | 6.00% |
| PR11-20A47 | PlayWorld | 2020 PlayWorld Systems Park & Playground Solutions Catalog | 10.00% |



COOPERATIVE PURCHASING PROGRAM
Houston-Galveston Area Council of Governments
3555 Timmons, Suite 120, Houston, TX 77027
Phone: 800-926-0234 Fax: 713-993-4548
www.hgacbuy.org

INVITATION TO SUBMIT COMPETITIVE:

BIDS

PROPOSALS

INVITATION No.: **PR11-20**

ISSUE DATE: **May 21, 2020**

CATEGORY: **PARKS & RECREATION EQUIPMENT**

PURPOSE OF THIS INVITATION

The Cooperative Purchasing Program (HGACBuy) of the Houston-Galveston Area Council of Governments is soliciting offerings for the furnishing of products/services as described herein.

NOTE: Only responses submitted online will be accepted. Responses are scheduled to be formally “opened” by H-GAC on the date and time indicated in the table below. Any responses submitted later than 1:00 p.m. on the due date will be deemed non-responsive and rejected.

PROCUREMENT SCHEDULE & DETAILS

| | |
|---|---|
| DRAFT SPECIFICATION / INVITATION: | March 26, 2020 |
| PRE-BID/PROPOSAL CONFERENCE: | April 23, 2020 @ 9:00 a.m. CT; Conference Room B, 2nd floor |
| FINAL SPECIFICATION / INVITATION: | May 21, 2020 |
| PROPOSAL RESPONSES DUE: | June 17, 2020 @ 1:00 p.m. CT; H-GAC Clock |
| PUBLIC RESPONSE OPENING: | June 17, 2020 @ 2:00 p.m. CT; H-GAC Clock |
| RECOMMENDATIONS TO BOARD: | August 18, 2020 |
| CONTRACT START DATE & TERM: | November 1, 2020 – July 31, 2022 (2 years) |
| The documents comprising this Invitation are available via web download at: https://www.hgacbuy.org/bids/ | |
| For assistance regarding this Invitation, please contact: Name: Neal Witty Phone: 713-499-6693 E-mail: neal.witty@h-gac.com | |

CONTENTS OF THIS INVITATION

SECTION-A: General Terms & Conditions

SECTION-B: Product/Service Specific Requirements & Specifications

SECTION-C: HGACBuy Forms

SECTION-D: Pro-Forma (Sample) Contract

FORMS: W-9, CIQ, 1295, HB89, CIF



SECTION-A
GENERAL TERMS & CONDITIONS
FOR BIDS AND PROPOSALS

INVITATION NO. PR11-20
DESCRIPTION: Parks & Recreation Equipment

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1. INTRODUCTION

The Houston-Galveston Area Council (**H-GAC**) is a "Government-to-Government" procurement service for States, State Agencies, Local Governments, Districts, Authorities, and qualifying Not-for-Profit Corporations (**End Users**). End Users become **Members** of the **H-GAC** Cooperative Purchasing Program (**HGACBuy**) by executing an Interlocal Contract, which is free of cost and evergreen unless cancelled. **HGACBuy**, acting on behalf of **Members**, is soliciting competitive offerings for the furnishing of products and/or services, as described elsewhere, which MAY be purchased by **Members** during the contract term. **Members** using the Program issue purchase orders directly to **HGACBuy** contractors.

2. DEFINITIONS, ABBREVIATIONS & ACRONYMS

The following definitions, abbreviations and acronyms may be found in these specifications, and shall be interpreted herein as specified below.

Definitions and Abbreviations:

Acceptance. Acceptance takes place when the **End User** agrees with the **Contractor** that the terms and conditions of the contract have been met and verified. Acceptance is not the same as Receipt, and can only occur after intact shipping, inspection by **End User**, and any onsite testing that has been stipulated as part of the order

Aggregate/Single Occurrence. The term "*aggregate*" in insurance terms is the sum of all claims against a specific policy for a specific loss incident. The term "*single occurrence*" differentiates between multiple claims and single claims against a specific policy. The inherent value of a policy's aggregate value is less important to an **End User** than is the value of a single claim as stated under "*single occurrence*."

Approved. Acceptable to the "authority having jurisdiction."

ARO. "After Receipt of Order". Used in conjunction with a defined time period (usually days or weeks) to establish the delivery or lead time pursuant to any individual purchase transaction. In the case of orders for bodies which will be mounted on a customer furnished cab/chassis, the term ARO shall be construed to mean "After Receipt of Cab/Chassis".

Authority Having Jurisdiction. The authority shall be either **H-GAC** or the relevant **End User** based on the requirements as stated in each specification item. Unless specifically stated, the authority shall be **H-GAC**.

Bidder. Any entity that submits a competitive bid to this Invitation. (See also "**Offeror**")

Change Order. Request by an **End User** for a change in the composition of an already submitted purchase order, for example to change quantity ordered, add or delete items, etc.

Contract. Specifically, a contract between **H-GAC** and a successful **Offeror** which is executed based on an award made pursuant this Invitation.

Contract Pricing Worksheet. The standard **H-GAC** form to be used by **Contractor** in preparing a quotation to an End User, upon which End User's purchase order will be based. **Contractor** may use another quotation form provided it contains required information, and only if approved by **H-GAC**.

Contractor. The contracted business entity responsible for fulfilling a contract executed pursuant to this Invitation.

Dealer/Distributor. A duly authorized and/or franchised business entity which sells and services a manufacturer's product in a specified marketing area.

Defect. A discontinuity in a part or a failure to function that interferes with the service or reliability for which the part was intended.

Electronic Media. As used herein, means computer based media such as 100mb Zip Disk, CDROM, e-mail, e-mail attachment, file downloaded from the web, etc.

End User. (See "**Participant**" and "**Member**")

Listed. Equipment or materials included in a list published by an organization, acceptable to the "Authority Having Jurisdiction" and concerned with product evaluation, that conducts periodic inspection of production of listed equipment or materials and whose listing states either that the equipment or materials meet appropriate standards or has been tested and found suitable for use in a specified manner. NOTE: The means for identifying listed equipment may vary for each organization concerned with product evaluation, some of which do not recognize equipment as listed unless it is also labeled. The "authority having jurisdiction" should utilize the system employed by the listing organization to identify a listed product.

Manufacturer. The person or persons, company firm, corporation, partnership, or other organization responsible for taking raw materials or components and making a finished product.

May. A term indicating a permissive use or an acceptable alternative to a specified requirement.

Member. An authorized Participant in the Program. (See "**Participant**" and "**End User**")

Motor Vehicle. The meaning of this term shall be based on the legal definition ascribed to it by the laws and/or regulations of the state in which any specific sale made pursuant to a Contract takes place.

Must. A term indicating a mandatory requirement.

Offer or Offering. Any product or service offered in reply to this Invitation.

Offeror. Any entity that submits a competitive bid or proposal in response to this Invitation. Bidder or Proposer.

Participant. Generally, any qualifying governmental or non-profit entity which has executed an Interlocal Contract for cooperative purchasing services with **H-GAC**.

Product Liability Insurance. Failure of Components and/or assembled equipment resulting in personal injury, disability or death and/or property damage is covered under the product liability insurance provisions.

Product or Product Item. Any of the specific goods, materials, equipment or service(s) specified in this Invitation. This term encompasses the base line item itself, and any and all accessories, options, modifications, ancillary services, assembly, testing, etc. that may be included in the delivered Product.

Proposer. Any entity that submits a competitive proposal in response to this Invitation. (See also "**Offeror**")

Purchaser. The **End User** having responsibility for the specification, requisition, ordering and acceptance of the Product or Service. (See also "**End User**")

Purchasing Authority. The agency that has sole responsibility and authority for negotiating, placing and, if necessary, modifying any solicitation, purchase order, or other award issued by a governing body [**H-GAC**].

Quotation. See "Contract Pricing Worksheet".

Receipt. Receipt takes place when a Product or Service is delivered to an **End User** and a document is executed that establishes that the Product is now in the possession of the **End User** or that the Service has been completed. Receipt DOES NOT connote or imply Acceptance.

Response. All or part of any offering submitted in response to this Invitation.

Shall. A term indicating a mandatory requirement or action.

Should. A term indicating a recommended or advised response to a specified requirement.

Vendor. A manufacturer's representative or dealer authorized to make sales and supply parts and service.

Acronyms:

ANSI = **A**merican **N**ational **S**tandards **I**nstitute

ASTM = **A**merican **S**ociety for **T**esting and **M**aterials

ASME = American Society of Mechanical Engineers
CFR = U.S. Code of Federal Regulations
DOJ = U.S. Deartment Of Justice
DOT = U.S. Deartment Of Transportation
EPA = U.S. Environmental Protection Agency
FAA = Federal Aviation Admistration
FMVSS = U.S. Federal Motor Vehicle Safety Standards
H-GAC = Houston-Galveston Area Council of Governments
IEEE = Institute of Electrical and Electronics Engineers
MVD = Motor Vehicle Division of Texas Department of Transportation
NFPA = National Fire Protection Association
NHTSA = National Highway Traffic Safety Admistration
NIOSH = National Institute For Occupational Safety And Health
NIST = National Institute of Standards and Technology
NTEA = National Truck Equipment Association
OSHA = U.S. Occupational Safety and Health Admistration
RRC = Railroad Commission of Texas
SAE = Society of Automotive Engineers
TBPC = Texas Building and Procurement Commission (formerly GSC)
TxDOT = Texas Deartment Of Transportation
UL = Underwriter's Laboratories Inc.
VTCS = Vernon's Texas Civil Statutes

3. NON-BINDING ORAL COMMENTS

No oral comment, utterance or response made by any employee, member, or agent of **H-GAC** or any Member of the Cooperative Purchasing Program shall be considered factual or binding with regard to this Invitation, or any contract awarded as a result of this Invitation. Valid and binding terms, conditions, provisions, changes or clarifications, or requests thereof, shall **ONLY** be communicated written form.

4. STRUCTURE OF RESPONSE

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

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

Offeror shall complete and sign a **Form A** and, if contracted, shall be solely responsible for all contractual requirements including administration, processing of purchase orders and handling of payments for transactions which may involve other dealers who actually deliver the products or services.

B. Multiple Respondents Acting Jointly:

A single Response shall be submitted, and each party to the Response shall complete and sign a separate **Form A** to be included in the single Response. If the Response is successful each party shall sign a separate contract with **H-GAC** and shall be responsible for compliance with all terms and conditions. Only those which have executed a written contract with **H-GAC** may process purchase orders and payments.

In any event, Offeror may be a party to one, and only one, response.

5. BASIC REQUIREMENTS & CONDITIONS

- a. The final requirements and specifications contained herein may be different, perhaps materially, from those in the "Invitation To Attend Pre-Bid / Pre-Proposal Conference", if any. It is **Offeror**'s sole responsibility to

thoroughly examine and review all documentation associated with this Invitation, including any Addendums, to ensure that any response submitted complies in every respect with all requirements.

- b. Any Addendum to this Invitation which may be required prior to the Response due date will be delivered to those prospective Offerors of record who have previously obtained a copy of this Invitation from **H-GAC**. Prospective Offerors shall be responsible for obtaining all documents relating to submission of a Response.
- c. **Offeror** shall thoroughly examine any drawings, specifications, schedules, instructions and any other documents, supplied as a part of this Invitation, and is solely responsible for understanding and compliance.
- d. **H-GAC** shall not be liable for **Offeror's** incomplete documentation, or for any costs associated with preparation and submission of any Response hereto. Additionally, all components of any Response become the property of **H-GAC**, **and shall be considered to be in the public domain**.
- e. **Offeror** shall make all investigations necessary to become thoroughly informed regarding any plan and/or infrastructure that may be required to support delivery of any Product or Service covered by this Invitation. No plea of ignorance by **Offeror** stemming from failure to investigate conditions that may now or hereafter exist, shall be accepted as a basis for varying **H-GAC's** requirements, or **Offeror's/Contractor's** obligations or entitlements.
- f. Requests for changes to the requirements or specifications herein must be in writing (e-mail, fax, letter) and must be received by **H-GAC** no later than fifteen (15) calendar days prior to the Response Due Date. **H-GAC** will review such requests, but may or may not make changes at its sole discretion. Changes, if any, will only be made by written Addendum sent to addressees of record. In any event, it is **Offeror's** sole responsibility to insure that any and all Addendums which may have been issued have been received and addressed.
- g. By submission of a response, **Offeror** expressly understands and agrees that all terms and conditions herein will be part of any subsequent contract that is executed pursuant to this Invitation.
- h. **Offeror** is advised that all **H-GAC** contracts are subject to the legal requirements established in any applicable Local, State or Federal statute.
- i. **Offeror/Contractor** must be in compliance with all licensing, permitting, registration and other applicable legal or regulatory requirements imposed by any governmental authority having jurisdiction. It is **Offeror/Contractor's** responsibility to insure that this requirement is met, and to supply to **H-GAC** upon request, copies of any license, permit or other documentation bearing on such compliance.
- j. Unless otherwise established elsewhere in this Invitation, NO minimum purchase quantities or spending levels are provided or guaranteed by **H-GAC** or any **End User**.
- k. This Invitation is not meant to restrict competition, but rather is intended to allow for a wide range of responses.
- l. Responses which are 'qualified' with conditional clauses or alterations of or exceptions to any of the terms and conditions in this Invitation may be deemed non-compliant at **H-GAC's** sole discretion.
- m. The term „**Offeror**“, or derivative thereof, shall become synonymous with „**Contractor**“ for any successful **Offeror** recommended for a contract pursuant to this Invitation.
- n. **H-GAC** reserves the right to:
 - Reject any and all offers received in response to this Invitation.
 - Reject any part of an offer received in response to this Invitation.
 - Determine the correct price and/or terminology in the event of any discrepancies in any response.
 - Accept a response from, and enter into agreement with, other than the lowest price **Offeror**.
 - Accept responses and award contracts to as many or as few **Offerors** as **H-GAC** may select.
 - Amend, waive, modify, or withdraw (in part or in whole) this Invitation, or any requirements herein.
 - Hold discussions with **Offerors**, although award may be made without discussion.
 - Request an **Offeror** to give a presentation of the Response at a time and place scheduled by **H-GAC**.
 - Exercise any of these rights at any time without liability to any **Offeror**.
- o. **H-GAC** reserves the right to determine that conditions exist which prevent the public opening of responses on the date and at the time advertised, and to reschedule the public opening for a future date and time. Responses received by **H-GAC** by the original deadline will be secured unopened until the rescheduled opening date and time, and those having timely submitted such responses will be notified.

6. OFFEROR'S AUTHORIZED SIGNATORY

The signatory shall be authorized to sign and contractually bind **Offeror**, and shall sign any and all Response documentation requiring a signature.

7. SURETY FOR INSURANCE

Contractor shall be responsible for using a surety company properly licensed by any and all states in which Contractor will do business with Participants. The surety company shall not expose itself to any loss on any one risk in an amount exceeding ten percent (10%) of its surplus to policy holders, provided any risk or portion of any risk shall have been reinsured, and such reinsurance shall be deducted in determining the limitation of risk applicable to **H-GAC's** insurance requirements.

8. CONFIDENTIAL / PROPRIETARY MATERIALS

All documentation submitted as part of **Offeror's** response to this Invitation will be considered to be in the public domain and may be made available to Members and others, after contract award, upon properly submitted request. If **Offeror** submits documents marked "confidential" or "proprietary", the Response may be deemed non-compliant.

9. REFERENCES

- a. **Offeror** shall list the names of at least five government agencies within the continental United States which have purchased from **Offeror** products or services similar to those covered by this Invitation, within the last two years. **H-GAC** reserves the right to determine if such products or services are appropriately similar.
- b. **Offeror** may provide reference information in whatever format desired, but each should include the following specific information:
 - Agency name
 - Contact person name
 - Address
 - Phone & Fax numbers
 - Description of product(s) or service(s) and date sold
- c. Other information, including criticism however learned, may be used by **H-GAC** in evaluation of responses.

10. INSURANCE

- a. Unless otherwise stipulated in Section B, **Offeror/Contractor** must have the following insurance and coverage minimums:

General liability insurance with a Single Occurrence limit of at least \$1,000,000.00, and a General Aggregate limit of at least two times the Single Occurrence limit.

Product liability insurance with a Single Occurrence limit of at least \$1,000,000.00, and a General Aggregate limit of at least two times the Single Occurrence limit for all Products except Automotive Fire Apparatus. For Automotive Fire Apparatus, see Section B – Product Specific of this Invitation.

Property Damage or Destruction insurance is required for coverage of **End User** owned equipment while in **Contractor's** possession, custody or control. The minimum Single Occurrence limit is \$500,000.00 and the General Aggregate limit must be at least two times the Single Occurrence limit. This insurance may be carried in several ways, e.g. under an Inland Marine policy, as part of Automobile coverage, or under a Garage Keepers policy. In any event, this coverage must be specifically and clearly listed on insurance certificate(s) submitted to **H-GAC**.
- b. Insurance coverage shall be in effect for the length of any contract made pursuant to this Invitation, and for any extensions thereof, plus the number of days/months required to *deliver* any outstanding order after the close of the contract period.
- c. Original Insurance Certificates must be furnished to **H-GAC** on request, showing **Offeror/Contractor** as the insured and showing coverage and limits for the insurances listed above.
- d. If any Product(s) or Service(s) will be provided by parties other than **Offeror/Contractor**, all such parties are required to carry the minimum insurance coverages specified herein, and if requested by **H-GAC**, a separate insurance certificate must be submitted for each such party.

- e. **H-GAC** reserves the right to contact insurance underwriters to confirm policy and certificate issuance and document accuracy.

11. OFFEROR CERTIFICATIONS

Offeror, by submission of a Response hereto, makes the following certifications under penalty of perjury and possible contract termination if any of these certifications are found to be false.

Non-Collusive Response

- a. The prices in the Response have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other **Offeror** or potential competitor.
- b. The prices which have been quoted in the Response (unless otherwise required by law), have not been knowingly disclosed by **Offeror** and will not be knowingly disclosed by **Offeror** prior to the public response opening, either directly or indirectly, to any other **Offeror** or competitor.
- c. No attempt has been made or will be made by **Offeror** to induce any other person, partnership or corporation to submit or not to submit a response for the purpose of restricting competition.

Non-Biased Specifications

This Invitation contains no requirements considered to be unduly biased in favor of **Offeror** or any other **Offerors** that may be competing for this procurement.

No Financial Interest or Other Conflict

- a. No **H-GAC** officer, employee, Board of Directors member or member of any **H-GAC** board or commission, nor family member of any such person, has a financial interest, direct or indirect, in **Offeror** or in any contract **Offeror** might enter into with **H-GAC**.
- b. No economic or employment opportunity, gift, loan, gratuity, special discount, trip, favor or service has been, or will be, offered or given to any officer, employee, Board of Directors member, or member of any **H-GAC** board or commission, nor to any family member of any such person.

Debarment and Suspension Status

- a. **Offeror** is not currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any government agency, nor is **Offeror** an agent of any person or entity that is currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transaction by any government agency.
- b. **Offeror** has not within a three year period preceding this Invitation been convicted of or had a civil suit judgement rendered against **Offeror** for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property.
- c. **Offeror** is not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated above.
- d. Offeror has not, within a three-year period preceding this Invitation, had any government (federal, state, or local) transactions terminated for cause or default.

Insurance Coverages

Offeror has and will maintain insurance coverage in accordance with the requirements of this Invitation.

Licensing & Permits

Offeror(s) has (have) all licenses and/or permits, required by any and all governmental entities having jurisdiction, to legally sell the products/services offered.

12. HISTORICALLY UNDERUTILIZED BUSINESS (HUB) PARTICIPATION

- a. To satisfy Texas' statutory requirements [Government Code, Chapter 2161, Subchapter D], **H-GAC** requires all **Offerors** to supply information in any bid/proposal response listing (1) the total number of subcontracts and (2) the total number of HUB contracts applicable to the Products or Services offered in the response. Local

governments often require this information for their own reporting requirements prior to placing orders through the **H-GAC** Cooperative Purchasing Program.

- b. **Offeror** must complete **Form B** and include subcontracts with HUB's that provide any materials or services related to sales that may be made thru **H-GAC**'s Cooperative Purchasing Program.

13. NON-RESIDENT RECIPROCAL SALES ACT

As required by Texas Civil Statutes in the award of contracts, an offeror which is not a Texas resident business must determine if its state of residence prohibits award of government contracts to Texas resident offerors without penalty. If **Offeror**'s resident state DOES penalize Texas offerors, **Offeror** must provide this information along with a copy of its applicable resident state's statute in the Response.

14. TEXAS MOTOR VEHICLE COMMISSION CODE & LICENSING

Sales of motor vehicles in the State of Texas are subject to the Texas Motor Vehicle Commission Code. If this Invitation includes any motor vehicle to be sold in the State of Texas, **Offeror** certifies by submission of a response hereto that all required Texas Motor Vehicle Commission licenses are in place and current, and that copies of all such licenses have been submitted with the Response. Further, it shall be **Contractor's** responsibility to keep current all required Texas Motor Vehicle Commission licensing during the term of the contract, and to furnish license copies at any time on request by **H-GAC**. If **Contractor** does not maintain current licensing, **H-GAC** reserves the right to immediately terminate the contract.

| |
|---|
| <p>NOTE: In accordance with the Texas Motor Vehicle Commission Code, contracts for motor vehicles to be sold within the state of Texas may be made <u>ONLY</u> with properly licensed Texas Motor Vehicle Dealers. Therefore, to be considered for a contract covering Texas End Users, the Response must include a Form A from a licensed Texas Motor Vehicle Dealer</p> |
|---|

15. INTENT AND SCOPE OF SPECIFICATIONS

- a. The intent of the specifications herein is to provide **Offeror** with sufficient information concerning the Products/Services to be contracted such that **Offeror** can prepare and submit an acceptable Response.
- b. The specifications may be detailed or general in nature with regard to any particular Product/Service. Where not otherwise specified, details of construction, materials, or the way in which services will be provided, are left to the discretion of the **Offeror**, provided only that any offering shall conform, as a minimum, to best Industry standards and practices and to what is currently being sold in the marketplace.
- c. Responses shall be considered only from **Offerors** that have established good reputations in their markets, and who furnish satisfactory evidence of ability to supply the Products/Services specified herein.
- d. **Offeror** shall show proof of ability to provide to **End Users** prompt and competent service, including parts if applicable, for all Products/Services covered by this Invitation, by proper completion of a Service Organization Document as described elsewhere herein.

16. REQUIREMENTS APPLICABLE TO PHYSICAL GOODS

In the case of physical goods (e.g. equipment, material, supplies, as opposed to services), all Products offered must, unless otherwise stipulated in Section B:

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

- b. Be available for inspection at any time prior to or after procurement.

17. PRODUCT CODES

Unless otherwise addressed in Section B of this Invitation, the following requirements shall apply:

- a. Each Product/Service offered shall be uniquely identified using an **H-GAC** Product Code, which shall be determined as described in Section B of this Invitation. **Offeror** shall offer ONLY ONE Product for any particular Product Code. For example, **Offeror** may wish to submit a bid for Product Code ABC and may have another offering that also meets the requirements for ABC. **Offeror** MAY NOT submit two offerings for ABC. The alternate offering that also meets the requirements for ABC must be offered as an option "upgrade/downgrade" to ABC on **Form E**.
- b. Pricing for optional upgrades or downgrades to base bid items should be quoted as an "adder" or "deduct" amount as appropriate, to be applied to the offered price of the base Product Item listed on **Form D**.
- c. Base bid items and their associated HGACBuy Product Codes are included in the Section B and/or on **Form D**.
- d. Selection of Product Codes for which to submit an offer is at **Offeror**'s sole discretion.

18. SPECIFIC DESCRIPTIVE REFERENCES

Except for Base Product Items listed on **Form D**, any reference to a specific catalog, data sheet, form, brochure, model name or number, etc. used herein to describe an item such as an option or accessory is only descriptive and is not to be considered restrictive unless otherwise noted. Such references are normally used only to indicate a type, general description, level of quality and/or required performance standards.

19. MANUALS

Unless otherwise specified or superceded herein, each Product delivered under an **H-GAC** contract, and if applicable any options thereto, shall be supplied with at least one (1) copy of a safety and operating manual. The cost of any such manuals must be included in the base price for any Product Item offered hereunder. If more detailed and technically orientated parts and maintenance manuals are available for a Product or option, at a cost, they shall be offered as options on the *FORM* designated herein for such options, or elsewhere in the Response as may be directed herein.

20. STANDARD FEATURES & OPTIONS

The following requirements are applicable primarily to physical goods.

Standard Features

- a. The stated minimum requirements for all Products listed herein include what **H-GAC** considers to be "standard" features. Even though such features might normally be offered as options rather than as standard, they are nonetheless considered to be standard in this Invitation, and must be included in the base price for any Product offered. Such features SHOULD NOT be offered as options except as deducts for their omission from the base Product.
- b. If it is unclear in the Response that an **H-GAC** standard feature is included in the base price, it will be assumed that such is the case. If awarded a contract **Offeror** will be expected to sell the Product with all **H-GAC** specified standard features included in the base price.
- c. Any feature or accessory normally offered by manufacturer as "standard" shall be considered a standard feature and shall be included in the base price of any offering, even though not specifically listed as a requirement in **H-GAC**'s specifications. Such features SHOULD NOT be offered as options except as deducts for their omission from the base Product.

Options - General

- a. Options are considered to be any features or accessories, other than **H-GAC**'s and Manufacturer's "standard" features or accessories.
- b. Options should be offered on the *FORMS* designated for quoting options. Each option should be listed and described on a separate line, and should include any Manufacturer's/Dealer's code number. If no Manufacturer's/Dealer's code number exists, **Offeror** should create one.

- c. Prices for all offered options shall be assumed to include any installation or mounting required to make it a fully functional component of the Product, unless otherwise stated in **Offeror's** response.

Required Options

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

Other Options

- a. "Suggested" or "Other" options may be listed for any particular Product in this Invitation, and **Offeror** is encouraged to quote pricing for such options. The extent of offered options in any response may be taken into consideration as part of the award criteria, at **H-GAC's** sole discretion.
- b. **Offeror** is encouraged to include options for non-equipment items that may be applicable to a sale, such as: Extended Warranties, Maintenance Agreements, Buy-back or Trade-In Agreements, Out-of-state Delivery Charges, Quantity or Special Discounts, Extended Training Classes, etc.

Published & Unpublished Options

- a. H-GAC Cooperative Purchasing Program (Program) contracts are awarded through a public competitive bid or proposal (RFP) process. Further to that process, Program policy considers an 'option' listed and priced in a bid or RFP Response: (1) To be a "**Published Option**"; (2) To be part of any awarded contract; and (3) To be available for purchase by Program members separately and independently from associated base line items. However, since Published Options may have not been subjected to the same scrutiny as the associated base line items, it cannot be concluded they were directly competed. Therefore, pursuant to Local Government Code 252.021(a), purchase of a published option costing more than \$50,000 shall not be allowed. Furthermore, **H-GAC** reserves the right at its sole discretion to disallow purchase of any Published Option through the Program if deemed contrary to the intent of the law.
- b. Any option that has not been listed and priced in the Response is considered to be an "**Unpublished Option**". Unpublished Options may be sold, but only in connection with the sale of a base Product Item, and only insofar as the total cost of all Unpublished Options remains below twenty five percent (25%) of the total summed cost of the base Product(s) plus any Published Options.
- c. No Published or Unpublished Option may be sold which essentially converts a Product such that it competes with a Product Item awarded to another contractor.

21. WARRANTIES, SALES & SERVICE

Unless otherwise addressed in Section B, the following requirements shall apply:

- a. Offeror must be a properly franchised dealer authorized to sell and service, including warranty service, all products offered and sold in response to the bid invitation or under any **H-GAC** contract.
- b. **Offeror** shall provide detailed Parts and Labor Warranty information with the Response. If **Offeror** submits a warranty with the Response which does not meet the minimum requirements herein, **Offeror** agrees by submission of a Response that such warranty shall be considered to be amended to meet those minimums.
- c. Warranties shall be manufacturer's standard and shall be inclusive of any other warranty requirements which may be stipulated elsewhere herein.
- d. Any warranties offered by a dealer shall be in addition to the manufacturer's standard warranty and shall not be a substitute for such. **Offeror's** base price for any Product shall be inclusive of the standard warranty.
- e. Complete warranty information will be supplied to **End User** with each Product sold.
- a. Warranties need not apply to normal maintenance service or adjustments, or to any product reasonably shown to have been repaired or altered in any way so as to affect its stability, or to any product which has been subject to misuse, negligence, or accident.
- f. **Offeror/Contractor** is encouraged to offer extended warranties as an option.
- g. Neither **H-GAC** nor **End User** assume any warranty or liability on **Contractor's** behalf unless made or assumed in writing, initiated by **Contractor**, and agreed to in writing by **H-GAC** or the **End User** respectively.
- h. **Contractor** shall be responsible for the execution and effectiveness of all product warranty and shall be the sole source for solution to problems arising from warranty claims. **Contractor** agrees to respond directly to correct warranty claims and to ensure reconciliation of warranty claims that have been assigned to a third party.

22. H-GAC ORDER PROCESSING CHARGE

H-GAC will levy an Order Processing Charge on **Contractor** for each sale done thru the H-GAC contract, **with the exception of orders for motor vehicles**. Any bid pricing submitted will be considered to include the Charge. The amount of the applicable charge shall be per the most current H-GAC schedule. For motor vehicle orders, the Processing Charge shall be levied on and paid by the **End User**.

23. PRE-PAYMENTS AND DISCOUNTS

- a. Progress, pre-payment and special discounts of any kind may be offered and detailed in the Response. Such discounts shall be clearly explained but shall not be a determining factor in awarding contracts except in the case of tie offerings.
- b. Quantity discounts applicable to similar Products sold to one or more **End User** Departments may be offered. Determination as to product similarity shall rest solely with **Contractor**.
- c. For specific purchases, any proposed quantity, pre-payment or special discounts shall be clearly shown on the Contract Pricing Worksheet.

24. INSPECTION / TESTING

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

25. PRODUCT DELIVERY

Unless otherwise addressed in Section B, the following requirements shall apply:

- a. Title to goods, and responsibility and liability for loss and/or damage in shipping pass to **End User** at the delivery destination after receipt and acceptance have taken place. Cost of shipping/delivery shall be paid by **End User** unless otherwise agreed to by **Contractor**. If **Contractor** will be paying for shipping/delivery, shipping terms must be "F.O.B. Destination, Freight Prepaid". If **End User** will be paying for shipping/delivery, shipping terms must be "F.O.B. Destination – Freight Collect".
- b. The details for the application and calculation of shipping and delivery charges must be stated in the Response on **Form E**. Any freight, shipping or delivery charged to **End User** will be prepaid and added to the invoice and will be clearly shown on any Contract Pricing Worksheet or other quote presented to the **End User**.
- c. The estimated delivery time after receipt of order (ARO), inclusive of Saturdays, Sundays and holidays, for all Products offered must be stated in the Response. Actual delivery for any particular order must be confirmed with **End User** at time of order placement and must be stated clearly on the Contract Pricing Worksheet.
- d. **Contractor** shall be responsible for delivery and Acceptance according to the requirements of the Contract and the Purchase Order.
- e. Contractor shall advise **End User** prior to making any shipment/delivery and shall make such shipment/delivery in accordance with **End User's** requirements, providing only that such arrangements do not contravene any requirement of the H-GAC contract unless agreed to by **Contractor**.
- f. The execution of all required tests, certifications and/or licensing, and costs thereof, shall be the responsibility of **Contractor**. Upon request by **End User** or H-GAC, **Contractor** shall provide any documentation or certification related to such tests, certifications or licensing.

26. OFFERED PRODUCT ITEM VARIANCES

Any variance in the specifications or performance of Products offered pursuant to this Invitation shall be acceptable to H-GAC only insofar as it MEETS or EXCEEDS the specifications and requirements of this Invitation.

27. REQUIREMENTS FOR SUBMISSION OF A RESPONSE

Unless otherwise addressed in Section B, the following requirements shall apply:

- a. Responses shall be submitted in two complete printed sets including an Original and one (1) Copy in separate "hard side" three-ring binders. The outer spine of each binder shall be labeled showing this Invitation No., **Offeror** Name, and either "Original" or "Copy", as applicable. The Original printed response will be

considered to be the binding Response in case of any conflicts between printed copies and electronic copies. Except for required forms, **H-GAC** Invitation documents should not be included in the Response.

- b. The Original and the Copy shall be submitted complete, except that the Electronic Media should be submitted only with the Copy.
- c. All required **H-GAC FORMS** and documents shall be properly completed, without exception or Offeror's Response may be deemed non-compliant. **Offeror** may not modify the format of any **H-GAC FORM** in any way. **Offeror** may photocopy or print blank **FORMS** as needed. Information submitted on the printed copies of the **FORMS** may not be handwritten except for signatures and initials. It is **Offeror's** responsibility to ensure that printed **FORMS** are clear and legible. Handwritten and illegible entries may be rejected. **Offeror's** printed, stamped or typed name shall appear on every **FORM** submitted in the Response.
- d. **The entire response submission** shall also be submitted on electronic media, including all required **H-GAC FORMS**. **Offeror** is strongly advised to make and work with copies of the original electronic **FORMS**. The originals can then be used to make additional electronic or printed copies of the blank **FORMS**. Signatures are not required on the electronic **FORMS**.
- e. The Response shall include ample written evidence, in the form of technical specifications, cut/tear sheets, brochures, pictures, drawings, etc., to demonstrate that all specifications herein have been met and/or exceeded.
- f. The Response shall include, in any format desired, an overview of the **Service Organization** which will support Products sold under any **H-GAC** contract. The overview must include facility locations, phone numbers and Service Manager names, as well as the following:
 - The procedure to be used by an **End User** requiring repairs.
 - Typical turn-around time on repairs.
 - Service Department days and hours of operation.
 - Number of qualified / factory trained service personnel normally on hand.
 - Description of the parts inventory on hand.
 - Training services, facilities and personnel available.
- g. Responses shall be enclosed in a sealed package(s) addressed to the Houston-Galveston Area Council, Cooperative Purchasing. The following information shall be stated on the exterior of the package(s):
 - Name and address of **Offeror**.
 - Date and hour of public response opening.
 - Bid/Proposal Invitation number.
 - The statement: "**SEALED BID/PROPOSAL, DO NOT OPEN IN MAIL ROOM**".**H-GAC** shall not be responsible for any Response not properly labeled.
- h. Submission of a COMPLETE Response by telegraphic or electronic transmission is not acceptable. However, Responses may be modified by telegraphic or electronic notice if such notice is received prior to the deadline for submission.
- i. Samples, when required, shall be submitted within the time specified and at no expense to **H-GAC**. If not destroyed or consumed during testing, samples will be returned upon request at **Offeror's** expense.
- j. **Offeror** shall provide firm contract pricing for all Products and Options being offered.
- k. If applicable, responses shall include copies of all current licensing which may be required by the Texas Motor Vehicle Division for execution of sales pursuant to any contract with **H-GAC**.
- l. Due to the complexity of responses and to aid in evaluation, the Response should contain **ALL** required information in tabbed sections as detailed below. Omission of any required FORM or information will be sufficient grounds for **H-GAC** to consider your response to be non-compliant.
- m. **First Section:**
 - **Form(s)-A – Offeror Identification & Signatory:** Identifies the offering party(ies), and should be completed by each party to the Response. If awarded, a contract will be executed with each.
 - **Form-B – Historically Underutilized Business Enterprises:** Used to collect information about disadvantaged and minority suppliers and subcontractors, and to commit **Offeror** to working with Participants toward their program goals.
 - **Form-C – Response Checklist:** Certification, and also an aid, to insure that all required information has been included in your Response.

- **Form W-9 – Request for Taxpayer Identification Number and Certification:** Should be completed by each party to the response.
- **Form CIQ – Conflict Of Interest Questionnaire:** Chapter 176 of the Texas Local Government Code requires vendors and consultants contracting or seeking to contract with **H-GAC** to file a Conflict of Interest Questionnaire (CIQ) if they have an employment or other business relationship with an **H-GAC** officer or an officer's close family member. The required questionnaire is located at the Texas Ethics Commission website: http://www.ethics.state.tx.us/whatsnew/conflict_forms.htm. It is Bidder's responsibility to download the form and furnish a completed copy with the Response.
- **Form 1295 – Certificate of Interested Parties** – Must be filled out electronically with the Texas Ethics Commission's online filing application, printed out, signed and provided from each entity that has submitted a Form A for this submission.
- **House Bill HB 89 Verification Form** – completed and signed and provided from each entity that has submitted a Form A for this submission.
- **References**, formatted as described elsewhere herein.
- **Service Organization Document**, formatted as described elsewhere herein.

Second Section:

- **Form D – Offered Items Pricing:** For Bids, contains the list of the Product Items covered by this Invitation. Select the items offered and fill in the price for each. (For RFPs, follow the instructions in Section B as this **Form** may or may not be used.)
- **Form E – Published Options:** Used to list and price all offered options. List, each on a separate line, all upgrades, downgrades, optional equipment, features, accessories and services which you desire to sell thru the **H-GAC** contract, if awarded. Published catalogs/price sheets may be listed, along with the discount structure that will apply. (For RFPs, follow the instructions in Section B as this **Form** may or may not be used.)

Third Section:

- Technical Specifications, Product Brochures, Tear Sheets, Cut Sheets, Strippers, etc. which clearly list and show all the standard features and capabilities of each Product Item offered on Form D.
- Warranty Documentation, as described elsewhere herein, for all items offered.

Fourth Section:

- Copies of any applicable Texas MVD Licenses.
 - Electronic Media, containing the complete response including all required *FORMS*, stored in a pouch or an envelope such that it will not fall out of the binder. (Required in 'Copy' only, not in 'Original'.)
- n. By submittal of Response, **Offeror** certifies to the best of its knowledge that all information is true and correct.

28. CLARIFICATION TO SPECIFICATIONS & REQUIREMENTS

- If **Offeror** is in doubt as to the meaning of any item in this Invitation, a written request for clarification may be submitted to **H-GAC** up to fifteen (15) calendar days prior to the deadline for response submission. **H-GAC** shall not be responsible for late delivery. Requests may be transmitted by FAX or e-mail to the assigned Specification Specialist and should clearly reference this Invitation number and the specific page and paragraph in question. If there are multiple questions, they should be stated separately and numbered.
- Any interpretation of Invitation documents, if made, will be by written Addendum duly issued. A copy of such Addendum will be mailed or delivered to each person officially on record as having been sent a copy of this Invitation. **H-GAC** will not be responsible for any other explanation or interpretation of the Invitation documents made or given prior to the award of the contract.
- Any objections to the Invitation documents must be filed in writing with **H-GAC** on or before fifteen (15) calendar days prior to the deadline for submission of responses.
- Prospective offerors are advised that, after a draft specification has been issued, the Pre-Bid/Proposal Conference is the primary forum through which comments and suggestions may be offered for consideration by **H-GAC** prior to issuance of the final invitation and specifications.

- e. All best efforts have been made to ensure that the product/service descriptions and associated specification information in Sections B & C are correct, and adequate time has been given to prospective Offerors to point out mistakes. However, if an error remains and is caught by Offeror before the scheduled bid/proposal opening, Offeror shall make note of the required correction in the Response and shall also notify **H-GAC** prior to the opening of responses.

29. INCONSISTENT INFORMATION

H-GAC review of responses supplied on **H-GAC FORMS** is a significant part of the evaluation process. **Offeror** shall state clearly all information required on the **FORMS**. **Offeror's** information supplied on the **FORMS** shall take precedence in the event any standard “boilerplate” type language included in **Offeror's** response is inconsistent with the information supplied by **Offeror** on the **H-GAC FORMS**. In all cases, information on **H-GAC's** printed **FORMS** supplied as part of **Offeror's** response shall take precedence over information supplied on electronic media.

30. REJECTION OF RESPONSES

- a. **H-GAC** may reject a response if:
- **Offeror** misstates or conceals any material fact in the Response, or if,
 - **Offeror** does not strictly conform to law or the requirements of this Invitation.
- b. **H-GAC** may reject any and all responses and may reject any part of a response.
- c. **H-GAC, at its sole discretion,** may also waive any formalities or irregularities in any response, or ask for corrected information except for pricing.
- d. **The following occurrences require disqualification of the bid/proposals:**
- Unsigned or unauthorized signatures on bids/proposals;
 - Bids received after the date and time for opening
 - Bids where prices are conditional on award of another bid or are subject to unlimited escalation
- e. **H-GAC** may refuse to award a contract to or enter into a transaction with an apparent low bidder if that bidder is indebted to **H-GAC**.

31. WITHDRAWAL OR MODIFICATION OF RESPONSES

Once received by **H-GAC**, responses may be modified or withdrawn prior to the submission deadline only if the request to do so is in writing submitted by **Offeror's** authorized representative. Responses and requests for modification received after the submission deadline will not be accepted. Requests for response withdrawal received after the submission deadline will be accepted if the request to do so is in writing submitted by **Offeror's** authorized representative.

32. RESPONSE EVALUATION

For Bid Responses:

- a. Section B will state whether the contract will be awarded to the lowest responsible bidder or to the bidder who provides goods or services at the best value for **H-GAC** and its participants.
- b. If the contract will be awarded based on best value, Section B will state any relevant criteria which **H-GAC** will consider.
- c. For each offered Product Item, **H-GAC** may use the offered price, prices for Required Options, and the prices of selected common Published Options to determine the lowest responsible offer.
- d. Failure of **Offeror** to submit pricing for frequently purchased options and any **H-GAC** required options may cause response to be considered non-compliant at **H-GAC's** sole discretion.

For Proposal Responses:

- e. **H-GAC** will evaluate proposals as detailed in Section B.
- f. By submission of a Response Offeror indicates acceptance of the evaluation technique and recognizes and accepts that **H-GAC** may at its sole discretion make subjective judgments during the evaluation process.

33. ORDER OF PRECEDENCE PRIOR TO CONTRACT AWARD

In the event of conflict between this document and any references or documents cited herein, this document shall take precedence prior to contract award.

34. AWARD OF CONTRACT

- a. **H-GAC** reserves the right to accept or reject any Product Item or option offered. Additionally, all options included in Offeror's response and accepted by **H-GAC** are understood to be included in any contract.
- b. **H-GAC** shall award contract(s) for line items or groups of line items, at its sole discretion.
- c. With authority granted by the **H-GAC** Board of Directors, a written contract shall be presented to the successful **Offeror(s)** and shall be subject to acceptance by the successful **Offeror(s)** within forty-five (45) calendar days after presentation by **H-GAC**. If a contract is not executed within forty-five (45) calendar days, **H-GAC** may rescind the contract offer and award a contract to the next **Offeror** in order of rank as determined by **H-GAC**.
- d. Delivery time and prompt payment discounts, including time allowed for payment, may be considered in tie-breaking of offers which are judged by **H-GAC** to be equal in all other criteria.
- e. The contract shall include the following documents in the stated order of precedence:
 - 1st The contract document signed by **H-GAC** and **Offeror**.
 - 2nd This Invitation and all specifications referenced herein.
 - 3rd **Offeror's** response to this Invitation.

35. PRO-FORMA CONTRACT

This Invitation includes a Pro-Forma (sample) Contract which successful offerors will be expected to sign. The actual final contract will be the same or nearly the same as the Pro-Forma. NOTE: Successful Offerors MAY NOT process any purchase orders until the contract documents have been executed and returned to **H-GAC**.

36. CONTRACT TERM

The contract shall be in effect throughout the period stated elsewhere in the contract documents, and thereafter until such time as any outstanding orders against the contract have been fulfilled. The contract may be extended if deemed by **H-GAC** to be in the best interests of the Program, and subject to mutual agreement of the parties.

37. PERFORMANCE & PAYMENT BOND

H-GAC's contractual requirements DO NOT include a Performance & Payment Bond (PPB) and offered pricing should reflect this cost saving. However, **Contractor** must be prepared to offer a PPB to cover any specific order if so requested by **End User**. **Contractor** shall quote a price to **End User** for provision of any requested PPB and agrees to furnish the PPB within ten business (10) days of receipt of **End User's** purchase order.

38. CHANGE ORDERS

End Users shall have the right to make additions by addenda for the purpose of clarification or inclusion of additional specifications, qualifications, conditions, etc. Any such addenda shall be made in writing and agreed upon by **Contractor** and the **End User** agency prior to issuance of any Change Order. A copy of any such Change Order shall be furnished by **Contractor** to **H-GAC**.

39. DUPLICATION OF TERMS OR STATEMENTS

Where statements or terms are duplicated or are extremely similar, **H-GAC** and the **End User** reserve the right to use the statement or term most favorable to **H-GAC** and/or the **End User**.

40. PUBLICITY

H-GAC encourages contractors to "market" the Program and can provide some information and artwork to be used in published promotional materials. However, any publicity or published material released by **Contractor** referencing the contract, whether in the form of a press release, brochure, photographic coverage, or verbal announcement, shall be issued only with prior review and approval by **H-GAC**.

41. TAXES

HGAC and **End User** participants are either units of government or qualified non-profit agencies, and are generally exempt from Federal and State sales, excise or use taxes. **Offeror** shall not include any such taxes in the Response. Further, it shall be the responsibility of **Contractor** to determine the applicability of any taxes to a particular order and act accordingly. Exemption certificates will be provided upon request.

42. DRUG FREE WORKPLACE

Contractor shall provide notice to its employees and sub-contractors, as required under the Drug-Free Workplace Act of 1988. A copy of **Contractor's** Drug-Free Workplace policy shall, on request, be furnished to any **End User**.

43. PRODUCT NOTICES & MAILINGS

H-GAC is **NOT** the owner of Products sold pursuant to this Invitation but acts only in the capacity of purchasing agent. In that regard, **Contractor** accepts sole responsibility for insuring that notices and mailings, such as Safety Alerts, Safety Recall Notices and Customer Surveys, are sent directly to the **End User** of record.

44. HANDLING OF ORDERS & PAYMENTS

In general, orders and payments will be handled as described below. More specific instructions and information regarding handling of purchase orders and the Order Processing Charge may be provided after contract award. Established procedures may be changed at any time by **H-GAC** as may be dictated by efficient business practice. The particulars of any sale, e.g. specific products, pricing, delivery, warranty, etc., will be in strict accordance with the terms and conditions of this Invitation and the specific contract awarded to **Contractor**. Beyond that:

- a. For any particular procurement to be made under the provisions of an **H-GAC** contract, **End User** and **Contractor** will discuss requirements and agree as to what will be provided.
- b. **Contractor** will prepare a Contract Pricing Worksheet and provide it to **End User**. The Worksheet will list everything being purchased including the base bid item(s), all published and unpublished options and the delivery date. All pricing shall be per the current contract.
- c. **End User** will send a purchase document to **Contractor**, which **Contractor** will send **H-GAC** together with the Contract Pricing Worksheet. **NOTE: Contractor** agrees not to offer, agree to or accept from **End User** any terms or conditions that conflict with or contravene those in **Contractor's** **H-GAC** contract, except for pricing discounts.
- d. **H-GAC** will prepare an "Order Confirmation" and send it to **End User** and to **Contractor**. The Order Confirmation verifies that **Contractor** has a valid **H-GAC** contract and that the order is in compliance with the requirements of the **H-GAC** Cooperative Purchasing Program. **Contractor** will not ship any goods before receipt of both **End User's** purchase document and **H-GAC's** Order Confirmation.
- e. On notification that **Contractor** has received an order, **H-GAC** will invoice **Contractor** for the applicable Order Processing Charge. **NOTE: The Order Processing Charge is charged to Contractor, EXCEPT in the case of motor vehicles.** For all sales of motor vehicles, the Order Processing Charge is levied on the **End User**, collected by **Contractor**, and remitted to **H-GAC** by **Contractor**.
- f. **Contractor** will deliver products/services ordered and will invoice **End User** for products/services accepted by **End User**. (See other Sub-Section herein dealing with Product Delivery.) **Contractor** will not invoice before shipment has been made.
- g. **End User** will pay **Contractor** for those products and/or services ordered which have been received and accepted. Under no circumstances shall any check be made payable to a representative or agent. Should a representative or agent submit an invoice to **End User** for any cost related to a purchase order issued to **Contractor** for products/services covered by an **H-GAC** contract, such invoice shall be forwarded to **Contractor** and **Contractor** will take action to correct the error.
- h. Upon delivery of any product/service by **Contractor** and acceptance by **End User**, **Contractor** shall remit to **H-GAC** the full amount of the applicable Order Processing Charge in accordance with the payment terms established in the **H-GAC** contract. Note, the Order Processing Charge is due whether or not **Contractor** has ever received an invoice from **H-GAC**. Sales executed based on the particulars of **Contractor's** **H-GAC** contract, without payment of the Order Processing Charge, may constitute fraud.

45. PRICE CHANGES

- a. Any permanent increase or decrease in offered pricing for a base contract item or published option is considered to be a price change. Temporary increases in pricing by whatever name (e.g. „surcharge“, „adjustment“, „equalization charge“, „compliance charge“, „recovery charge“, etc.), are also considered to be price changes.
- b. Except in the case of contracted published catalogs and price sheets, prices for Base Bid Items and Published Options are expected to be held firm for a minimum of 90 days from the date an awarded Offeror signs the H-GAC contract. Thereafter, changes will be considered if accompanied by justifying documentation satisfactory to H-GAC. For published catalogs and price sheets which are on an H-GAC contract, requests to amend the contract to reflect any new published catalog or price sheet may be submitted whenever the manufacturer publishes the new document. Any such request must include the new catalog or price sheet.
- c. If **Contractor** routinely offers discounted contract pricing, **H-GAC** may request **Contractor** to accept amended contract pricing equivalent to the routinely discounted pricing.
- d. No price change will be allowed unless it has been reviewed and approved by **H-GAC** in writing. **Contractor** must have received **H-GAC's** written approval of any change prior to charging the new price or using it in any quotation prepared for an End User.
- e. Price change requests must be submitted to **H-GAC** in writing and must be received by **H-GAC** at least thirty (30) calendar days prior to the requested effective date of the change and must state the time period for which the requested pricing will remain firm.
- f. Price change requests shall include **H-GAC Forms D and E**, or whatever documentation was used to submit pricing in the original Response hereto, showing all affected items with current contract price, requested price, and percentage change shown clearly for each. This documentation should be submitted in MSExcel format to facilitate analysis and updating of the website.
- g. Price change requests **MUST** be supported with substantive documentation (e.g. manufacturer's price increase notices, copies of invoices from suppliers, etc.) showing that **Contractor's actual costs** have increased. The Producer Price Index (PPI) may be used as partial justification, subject to approval by **H-GAC**, but no price increase based solely on an increase in the PPI will be allowed.
- h. All Products shall, at time of sale, be equipped as may be required under any then current applicable local, state, and federal government requirements. If, during the course of any contract, changes are made to such government requirements which cause a manufacturer's costs of production to increase, **Contractor** may increase Product pricing to the extent of **Contractor's** actual cost increase. The increase must be substantiated with support documentation acceptable to **H-GAC** prior to taking effect. Modifications to a Product required to comply with such requirements which become effective after the date of any sale shall be the responsibility of the **End-User**.
- i. In cases involving contract extensions exceeding sixty-one (61) days beyond the stated expiration date of the contract, **Contractor** may request a price change based on the same conditions as stated above. However the thirty (30) day prior notice is waived and **H-GAC** will consider the request immediately on receipt.
- j. H-GAC reserves the right to accept or reject any price change request. Acceptance, if granted, will be in writing and the approved changes will become part of the contract.

46. CONTRACT ITEM CHANGES

- a. If a manufacturer discontinues a contracted item, that item will automatically be considered to be deleted from the contract with no penalty to Contractor. However, **H-GAC** may at its sole discretion elect to make a contract award to the next low offeror for the item, or take any other action deemed by **H-GAC** to be in the best interests of **End Users**, at its sole discretion.
- b. If a manufacturer makes any change in a contracted item which does not affect the contract price, Contractor shall advise **H-GAC** of the details. If the 'new' item is equal to or better than the originally contracted item, the 'new' item shall be approved as a replacement. Otherwise **H-GAC** may allow or reject the change, or take any other action deemed by **H-GAC** to be in the best interests of **End Users**, at its sole discretion. If the change is rejected there will be no penalty to Contractor.
- c. If a manufacturer makes any kind of change in a contracted item which affects the contract price, Contractor shall advise **H-GAC** of the details. **H-GAC** may allow or reject the change at its sole discretion. If the change is rejected there will be no penalty to Contractor. However, **H-GAC** may elect to make a contract award to the next low offeror for the item, or take any other action deemed by **H-GAC** to be in the best interests of **End Users**, at its sole discretion.

- d. In the case of specifically identified catalogs or price sheets which have been contracted as base bid items or as published options, routine published changes to products and pricing shall be automatically incorporated into the contract. However, **Contractor** must still provide thirty (30) calendar days written notice and an explanation of the changes to products and pricing. **H-GAC** will respond with written approval.

47. FORCE MAJEURE

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

48. PERFORMANCE UNDER CONTRACT

H-GAC is committed to insuring that **Contractor** provides effective and efficient service to all Participants in the Cooperative Purchasing Program and expects that certain Performance Conditions must be met. Failure to meet these conditions may result in contract termination. In that regard, **Contractor shall:**

- a. Appoint a dedicated representative to be the contact person and focal point for all matters relating to End User quotations and orders. The representative shall have: A toll free phone number with voice mail; A fax number; A working e-mail address; and A postal address.
- b. Insure that the representative timely monitors all communication modes listed above, and promptly responds to communications from **End Users** and **H-GAC** in any of these modes. Phone calls will be promptly returned, in any event not later than the next business day. Acceptable failure will be due only to Force Majeure.
- c. Maintain sufficient qualified staff to promptly process all communications from **H-GAC** or **End Users**, and to efficiently, effectively and accurately service all requirements of the contract.
- d. As may be requested by **H-GAC**, replace any staff members who are not providing the service and expertise deemed necessary by **H-GAC** for acceptable support of **End Users**.
- e. Properly prepare and provide to **End User** a Contract Pricing Worksheet, or a quotation in other format as approved by **H-GAC**, for each and every order that is to be executed.
- f. Furnish, on request of **H-GAC**, reasonable data, forms and graphic material to be used in brochures or other print media, or on **H-GAC**'s website.
- g. Allow access to **H-GAC** authorized personnel for inspection of operating facilities, and auditing of purchase orders during the contract period, and for a period extending thru the completion of any outstanding orders. Site inspection may be arranged not less than ten (10) calendar days prior, shall include the names of all participants, and shall be at no expense to **Contractor**.
- h. **Reporting Requirements:**
 - **Contractor** agrees to submit written quarterly reports to **H-GAC** detailing all transactions during the previous three-month period. Such reports shall include, but are not limited to the following:
 - **End User** name
 - Product/Service purchased, including Product Code if applicable
 - End User Purchase Order Number
 - Purchase Order Date
 - Product/Service dollar amount
 - **HGACBuy** Order Processing Charge amount
 - Reports must be provided to **H-GAC** in MSExcel or other acceptable electronic format and are due by the 30th day of the month following the applicable quarter being reported.
- i. Should **Contractor** default in providing Products or Services as required by this Invitation and the contract, recourse may be exercised thru cancellation of the contract and other legal remedies as may be appropriate.

49. CONTRACTOR ORIENTATION/TRAINING

H-GAC believes that **Contractor's** familiarity with the operational policies and requirements of the Cooperative Purchasing Program is a key factor in achieving **End User** satisfaction. In that regard, the Contact Person listed on **Form A**, or an alternate, shall be required to participate in an **H-GAC** vendor orientation/training as soon as possible after contract award. In addition, any other of Contractor's staff who will be involved in any way with the

HGACBuy Program should participate in orientation. The orientation may be presented as a teleconference or webinar or may be held in **H-GAC**'s offices as may be determined by **H-GAC** and Contractor to be the most efficient and effective form of delivery.

50. LEGAL & CONTRACTUAL REMEDIES

RESOLUTION OF PROTESTED SOLICITATIONS AND AWARDS

Procedure

Any actual or prospective **Offeror** or **Contractor** who is aggrieved in connection with a purchase transaction may file a grievance. The grievance may be filed at any phase of the procurement. In order for an above-mentioned party to enter the grievance process, a written complaint must be sent to the Chief Operations Officer (COO) of **H-GAC** by certified mail which identifies the following:

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

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

Expedited Resolution

The Procurement Officer or Departmental Director responsible for the solicitation shall contact the complainant and all interested parties and attempt to resolve the allegations informally within ten (10) working days from date of complaint. If the allegations are successfully resolved by mutual agreement, documentation will be forwarded to the Chief Operations Officer of the resolution with specifics on each point addressed in the original complaint.

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

Appeals

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

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

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

RESOLUTION OF CONTRACT DISPUTES

Upon breach or default, **H-GAC** shall give the **Contractor** written notice of default. If the default is not remedied, within a reasonable specified time from date of notification, to the satisfaction and approval of **H-GAC**, default will be declared.

Upon breach of contract or default, **H-GAC** may exercise any and all of its rights afforded by law, including but not limited to those referenced in the General Contract Provisions.

SOLICITATIONS OR AWARDS IN VIOLATION OF THE LAW

Contracts awarded in violation of the competitive process or otherwise in violation of the law are voidable by **H-GAC**.

51. NATIONWIDE SALES OPPORTUNITIES

HGACBuy provides purchasing services to local governments qualifying non-profits throughout the nation, and desires to make established contracts available to them wherever and whenever practicable. Therefore, once a contract is awarded, **Contractor** is expected to expand the scope of its marketing effort to include sales to **End Users** in all areas of the United States, and/or to assign any **H-GAC** contract to another contractor(s) as deemed appropriate by **H-GAC** in the interest of its End Users.

- **Contractor** may sell through **HGACBuy** anywhere subject to compliance with applicable laws and regulations. If the market structure in which **Contractor** operates requires a contract assignment for any particular sale, **H-GAC** will expect **Contractor** to assign the contract to a Manufacturer or to another Dealer(s). Such assignment must be approved by **H-GAC**.
- **Contractor**'s differential costs (e.g. transportation & delivery charges) and allowances (e.g. manufacturer's sales incentives) related to any sale may be charged to buyer.

End of Section A General Terms & Conditions

SECTION-B

PRODUCT SPECIFIC REQUIREMENTS FOR PARKS & RECREATION EQUIPMENT

1.0 PURPOSE AND SCOPE

The Houston-Galveston Area Council (H-GAC) is a government regional planning commission. Included within H-GAC is the *HGACBuy* program, which issues bid invitations and makes awards on behalf of our local government Members (municipalities, counties, K-12 schools, universities, hospital and special districts, and other local agencies), within and beyond Texas (8000 members in 49 states). **H-GAC expects (confirmed by a response to this Invitation) Offeror to have the capability and willingness to serve any H-GAC member, directly, or indirectly through an arrangement with (or contractual "assignment" to) another dealer or the manufacturer (i.e. in the case of an Offeror being a dealer).** As noted in Section-A, a vendor under this contract may petition H-GAC for an assignment (e.g. to a third party such as another dealer), whereby H-GAC extends an offer on vendor's behalf to the third party to be an additional, separate contract holder for the awarded catalog. If they are agreeable to the terms & conditions, contract pricing, et cetera, the third party may then be added onto the contract as an additional, independent vendor, capable of quotations, installation, receiving of end user payments, and the remittance of the purchase order processing charge.

This solicitation is intended to replace the current contract (PR11-18), with this specification addressing the potential needs of our Cooperative Purchasing Program's Members. It focuses on items consistent with local governments' parks and public venue needs, such as playground / child development equipment, safety surfacing, site amenities (tables, benches, grills, drinking fountains, sports and leisure/fitness equipment), and shelters/canopies. This specification describes a "catalog" style bid format, whereby complete manufacturers' catalogs will be pre-listed and priced (by manufacturers and/or dealers) in their entirety, with Offerors pricing the catalog documents at a percentage-off-list price. Offerors who are awarded contracts pursuant to this Invitation will be able to sell the equipment contained in the awarded catalog(s) through the program to H-GAC Members during a twenty-four (24) month contract period.

2.0 ACRONYMS AND DEFINITIONS

- ASTM International: American Society for Testing and Materials, Intl (100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA, 19428-2959).
- Catalog: In general, an official pricing document from the manufacturer or dealer; specifically, a formal, published manufacturer's catalog, with models and accessories listed and indexed by model numbers/codes, with associated retail/list pricing sheets; or, if the previous is unavailable, an internal manufacturer-to-dealers list price document or dealer price book, listing models and accessories and inclusive of available manufacture item numbers/codes and list prices.
- Contractor: H-GAC awardee under contract to sell through this program (vendor).
- Cost-Plus: Pricing offered as a percentage over actual cost. This method is useful in situations where unforeseen variables may affect the actual, final price (e.g. pricing on playground equipment installation, where there are regional cost-per-hour variances, ground / slab preparation problems, et cetera).
- CPSI: Certified Playground Safety Inspector". Certification offered by the NPSI for playgrounds safety inspections, covering ASTM and USCPSC standards.
- Invitation: The *Invitation to Submit Formal Bids* associated with the final version of this specification.
- IPEMA: International Play Equipment Manufactures Association (4305 North Sixth Street, Suite A, Harrisburg, PA 17110).

- **Members:** Local government agencies (cities, counties, police and fire departments, K-12 schools, universities, et cetera) participating in the Houston-Galveston Area Council's Cooperative Purchasing Program (*HGACBuy*). Members, at their discretion, purchase equipment and services through H-GAC from contracted manufacturers and/or dealers, following a formal bid-award process.
- **NPSI:** National Playground Safety Institute (National Recreation and Park Association; 22377 Belmont Ridge Road, Ashburn, VA 20148-4150).
- **Offeror:** Manufacture and/or dealer who submits a formal pricing response to this Invitation (bidder).
- **USCPSC:** U.S. Consumer Product Safety Commission (4330 East West Highway, Bethesda, MD 20814).

3.0 SAFETY REQUIREMENTS: PLAYGROUND EQUIPMENT

For playground equipment and safety surfacing, and as applicable, playground installation services bid and sold under this invitation and its subsequent contract, manufacturers and dealers shall conform to the following safety requirements. **By submitting a formal bid response, Offeror acknowledges compliance to the following minimum requirements:**

- 3.1 Compliance with CPSC safety standards as expressed in CPSC Publication No. 325: *Handbook for Public Playground Safety* (most recent version).
- 3.2 Playground equipment manufacturers shall possess IPEMA certification.
- 3.3 **Compliance with these ASTM standards (most current versions):** F1487: *Standard Consumer Safety Performance Specification for Playground Equipment for Public Use*; ASTM F1951: *Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment*; ASTM F2373 *Standard Consumer Safety Performance Specification for Public Use Play Equipment for Children 6 Months through 23 Months*.
- 3.4 **Surfacing manufacturers and installers shall possess IPEMA certification or shall provide evidence of compliance to the following ASTM standards: for surfacing (most current versions):** F1292: *Standard Specification for Impact Attenuation of Surface Systems, Under and Around Playground Equipment*; F2075: *Standard Specification for Engineered Wood Fiber for Use as Playground Safety Surface Under and Around Playground Equipment*; F2223 *Standard Guide for ASTM Standards on Playground Surfacing*; F2479 *Standard Guide for Specification, Purchase, Installation and Maintenance of Poured-In-Place Playground Surfacing*.
- 3.5 Where normally available by manufacturers, factory certified dealer installers (in which case, associated pricing shall be specified on Form-E)
- 3.6 Capability of passing a formal third party NPSI-CPSI audit if required by H-GAC member.

4.0 GENERAL REQUIREMENTS

- 4.1 All equipment sold under this program shall be new, non-refurbished equipment, carrying the manufacturer's standard warranty, being as good or better as is normally issued to government buyers.

5.0 PRODUCT CODES AND PRICING

- 5.1 For the purpose of this Invitation, all catalogs covered by this specification shall be relegated to those pre-listed on Form-D. On Offeror's bid submittal, a reference shall be made to the Form-D alpha-numeric "Product Codes" on any options priced on Form-E. Offeror may price any catalog on Form-D and shall do so as a single percentage discount off list pricing, for the

entire applicable catalog(s) described. **Bids where a line item(s) is shown without any listed discounts (i.e. zero percent) will be deemed as a non-compliant line item(s).**

- 5.2 The catalogs and price books bid shall be the most current documents in effect during this Invitation's open bid period - specifically those corresponding with a 2020 calendar year time frame and the submittal date (i.e. May 2020). If a manufacturer issues a catalog revision during the life of this contract, contractors shall submit the revised catalog to H-GAC as part of a contract update request.
- 5.3 **H-GAC ORDER PROCESSING CHARGE:** As described in Section-A, for each purchase order processed under an awarded contract, H-GAC will directly invoice contractor a 1.5% Order Processing Charge, applicable to the price of all equipment and services (including installation, et cetera) that are submitted in contractor's solicitation response. Fee is calculated from awarded bid pricing before any additional point-of-purchase discounts have been applied. It is Offeror's responsibility to take this charge into account in the pricing offered in response to this Invitation (i.e. building this fee into Form-D discount figure and the Form-E options prices)

- 5.4 **Offeror shall include with bid package, for every catalog bid under this Invitation, an electronic copy of:**

- (1) The applicable manufacturer's catalog; and**
- (2) The associated list price book / sheet.**

Line items that are bid without a list pricing shall be non-compliant.

- 5.5 Bid pricing shall be exclusive of freight charges, which will be addressed at the time of each individual sale, as a purchase order line item, specific to the individual H-GAC end user's location.
- 5.6 H-GAC's Form-E is included in your bid package. Offeror shall use it to price those related options that fall outside of a particular catalog listed herein. These include such things as installation and other labor/services fees, extended warranties, et cetera. Due to the preferences shown in the past from HGAC Members, bid responses for playground, skate park, water park, and shade / shelter equipment (and any other equipment where seller normally offers installation) should ideally include pricing (separately, on Form-E) for installation, and where normally or potentially provided by Offeror, pricing on related services such as design, demolition, preparation, and other associated, related services.

To satisfy this, if Offeror does include options pricing on such services/labor charges, Offeror may use the following option pricing mechanisms:

Specific-pricing tables showing \$/hour, cost/unit, \$/square foot, \$/column (e.g. concrete / footing installation), et cetera.

NOTE THE FOLLOWING CHANGES MADE TO H-GAC'S PREVIOUS BID SPECIFICATION REQUIREMENTS IN REGARDS TO LABOR/SERVICES PRICING

Restrictions

- ◆ Offeror shall **NOT** price such installation/labor options as a range (e.g. “between \$x and \$y), or “cost/cost-plus”, or a “not to exceed x% or x\$”, or a “per project basis”. **Such options will be disallowed from a line item award.**

- ◆ **Offeror shall NOT include the following on Form-E:**

- **Catalogs that are represented on this specification (Form-D)**
- **Pricing / catalogs for other related equipment (e.g. replacement parts)**
- **WITHOUT specific pricing (i.e. priced without a specific options table with prices or a combination list price sheets - % discount off list)**
- **Non-catalogs products (replacement parts, complementary products from other brands, custom designs, et cetera) WITHOUT specific pricing (i.e. WITHOUT specific options table with prices, or list price sheets with a % discount off list)**

Such options pricing of an otherwise responsive bid will be disallowed from the final award

5.7 Where Offeror provides a detailed labor/services table, it may be framed as national, regional, or state-by-state.

5.8 List price books/sheets should contain only the item descriptions and the non-discounted list prices...no "HGAC Price", "Price + Discount", or other variation.

Note: Per the Texas Interlocal Cooperation Act, a governmental entity may not use an interlocal contract with a purchasing cooperative to purchase engineering or architectural services (Texas Government Code, Section 791.011(h)). Consequently, if a response includes quotes either of these pricing elements, that portion will not be included in award.

6.0 MANUFACTURERS

H-GAC welcomes manufactures participation in this bid process. At a minimum, this would mean encouraging dealers to participate in this bid invitation, or to bid directly, or jointly with other dealers. Manufacturer-bidders who become awarded contractors will provide HGAC Members with assistance, PO processing, product delivery, fee remittal, and quarterly sales reporting to HGAC. However, manufacturer may utilize dealers for individual sales quotations, delivery, and installation capacities.

7.0 AWARDS

For each specific Form-D line item, H-GAC will recommend awards to the contractor with the highest overall score providing the best value.

- **Scoring Component: Pricing**
For each line item, a review of Offerors' submitted bid prices will be conducted. Where pricing elements are satisfied (including a thorough and accurate Form-E, et cetera), each Offeror will be ranked first, second, third, et cetera, based upon product pricing levels. The Form-D Base percentage discount submitted, weighted to 90% of the total score. Each rank will then be adjusted against the weighed multiplier to arrive at this pricing subsection score.

- **Scoring Component: Past Performance**

An evaluation will be conducted of the Offeror's previous sales performance as an HGACBuy Contractor. This is weighted at a maximum 10% of the total score. If an Offeror is a current vendor and has sales, they will receive the full 10%, and for no sales, 0%. First-time bids will receive the maximum 10% for this scoring component. Each Offeror's rank will be adjusted against the 10% / 0% index to arrive at this Past Performance subsection score. For each line item, an offeror will receive a final score, comprised of the score for their Pricing and Past Performance scores.

In the event of a tie, H-GAC reserves the right to utilize additional factors in compiling a tie breaker, which may include an offeror's specific H-GAC member sales data, number and location of branches, **depth and breadth of priced options (e.g. inclusion of installation)**, a vendor's reporting and fee remittance history with HGAC, vendor history with respect to HGAC members, et cetera. NOTE: For joint bids (e.g. a single response from multiple dealers), each party will be scored per the above criteria and an overall average will be taken of all Form-A's submitted to determine the overall score for each joint bid submission. Requests for debriefing must be in writing within five (5) days after Board approval. H-GAC reserves the right to not conduct debriefings made after that time. This procedure is not available to parties that did not participate in solicitation or had non-responsive (failing to follow solicitation requirements), non-timely (late), or otherwise rejected proposals/bids.

8.0 MARKETING & SUPPORT PLAN (FORM-H)

H-GAC expects proposer to have the capability and willingness to serve any H-GAC Member across the nation, and to promote this contract to the best of its ability. Consistent with this, proposer should acknowledge this, with a description of the resources that will most likely be employed (1) in promoting this contract (e.g. sales calls, mail-out campaigns, et cetera, and (2) in serving H GAC Members (e.g. staff appointed to manage the contract, possible revised processes for purchase orders, staff training relating to this contract). Reference the H-GAC Forms Packet for Form-H.

9.0 COMMITMENT

Offeror is required to make some basic commitments to ensure the overall success of this program. By submission of a response, Offeror agrees to the following:

- Corporate/Sales Commitment

A commitment that HGACBuy has the support of senior management and that HGACBuy will be the primary government contracting vehicle when offering services/products awarded from this solicitation to eligible end users nationwide. A further commitment to aggressively market the program, both independently as well in partnership with HGACBuy.

- HUB Participation

It is H GAC's goal to have Historically Underutilized Business Enterprise (HUB) participation in providing services under a contract. If Offeror(s) intends to employ subcontractors in providing services/products related to this solicitation, Offeror(s) shall make and demonstrate a good faith effort to include HUB participation under a contract. Offeror(s) good faith effort shall include, but is not limited to the following affirmative steps (Ref. 2CFR 200.321 as a guide):

- 1) Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- 2) Dividing total requirements, when economically feasible, into smaller task or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- 3) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- 4) 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

NOTE: The term HUB as used in this solicitation is understood to encompass all programs/business enterprises such as Small Disadvantaged Business (SDB), Disadvantage Business Enterprise (DBE), Minority Owned Business Enterprise (MBE), Women Owned Business Enterprise (WBE) and Disabled Veteran Business Enterprise (DVBE).

***** End of Section-B *****



SECTION-C: H-GAC FORMS

For Use In Responding To Competitive Bid And Proposal Invitations

| | |
|-----------------|------------------------------|
| Invitation No.: | PR11-20 |
| Title: | Parks & Recreation Equipment |

This document contains the following (required) H-GAC forms:

| FORM | DESCRIPTION |
|------------|--|
| Form-A | Offeror Identification and Authorized Signatory |
| Form-B | Historically Underutilized Business Enterprises |
| Form-C | Response Checklist |
| Form-D | Offered Items Pricing |
| Form-E | Published Options |
| Form-H | Marketing & Support Plan |
| Form W-9 | Request for Taxpayer Identification Number and Certification |
| Form CIQ | Conflict of Interest Questionnaire |
| Form 1295 | Certificate of Interested Parties |
| Form HB 89 | HB Verification Form |
| C.I.F. | Contractor Information Form |

Offeror shall use the tabbed Excel version of these forms (no PDF)

These forms are hereby made available in electronic format. And **may not** be changed or altered in any way, except as may be specified on the form.

FORM-A: OFFEROR IDENTIFICATION & AUTHORIZED SIGNATORY
(DO NOT handwrite this Form. Information must be typed in.)

Invitation No.: PR11-20

Invitation Title: Parks & Recreation Equipment

Offeror Company:

Offeror Status Manufactur Dealer/Distributo Other
 Single Offeror Multiple
Response Type(1): Acting Alone Or Offerors

Contract Signatory(2):

Title:

Mailing Address(3):

Street/PO Box

City

State & Zip

Physical Address:

Street

City

State & Zip

Phone:

Fax:

Email Address:

Federal Tax ID No.:

Web Page URL:

(1) If Joint Offering, all parties must submit a signed Form A. A contract will be offered to each.

(2) Person who will sign final contract documents if an award is made.

(3) Address to which final contract documents would be sent for signature.

Member Contact Information

Contact Person (4):

Title:

Mailing Address:

Street/PO Box

City

State & Zip

Physical Address:

Street

City

State & Zip

Toll Free Phone:

Fax:

Email Address:

(4) Person who End Users will contact for product information and pricing quotations.

The Signatory below, on behalf of Offeror:

- Acknowledges having thoroughly reviewed the Invitation;
- Attests to having the authority to sign this response and commit Offeror to honor all requirements;
- Makes, under penalty of perjury, all required Offeror Certifications as detailed in General Terms;
- Certifies that all information provided in this Response is true and correct.

Signature:

Title:

Printed Name:

Date:

Title: Parks & Recreation Equipment

Offeror: _____

HUB Status Of Offeror

Offeror is a HUB, as detailed below. Offeror is not a HUB.

Designation(s): HUB DBE MBE WBE Other _____

*Certifying/Listing Authority(s):

*** Note:** The terms "Certified" and "Listed" as used in conjunction with HUB programs relate to the process of HUB qualification review. Jurisdictions usually require that companies claiming HUB status be reviewed and confirmed as meeting certain minimum requirements to claim that status, and that the review and confirmation process be carried out by certain designated entities.

Members of HGACBuy are subject to various requirements relative to purchasing goods and services from Historically Underutilized Business Enterprises (HUBs)(See Note 1). These requirements are promulgated by federal and state governmental authorities, and include measureable criteria such as "percentage of total dollars spent directed to HUBs", "number of HUB contractors used", "HUB subcontractors employed by primary contractors", etc. These requirements are generally formalized in goal oriented programs.

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

| | | | |
|--------------------------------|--|-------|--|
| Accepted and Agreed By (Name): | | | |
| Title: | | Date: | |

Subcontracts

On a separate sheet, list any subcontractors that would be employed in providing products or services related to this solicitation. Include the following information for each subcontractor:

- a. Company Name
- b. Address
- c. Phone number
- d. Applicable HUB designation/certification (DBE, MBE, etc.)
- e. Type of work subcontractor has been certified to perform as a HUB. Firm must be certified in a North American Industry Classification System (NAISC) code applicable to the kind of work the firm would perform on the contract.

Subcontractor List attached. No Subcontractors will be used.

Title: Parks & Recreation Equipment**Offeror:** _____

This form is provided to help insure that all required response elements have been completed and included, or certified as being available upon request. **Responses that do not comply with all requirements may be considered non-compliant.**

This Response shall include:

| | |
|----|---|
| 1 | All H-GAC forms (HGAC Forms Packet and those included in this table below), completed, and signed where prompted |
| 2 | A copy of the complete submission, including all required H-GAC forms, and all required documents. The HGAC forms document shall be unaltered except for the prompted data fields (name, pricing, etc.) and submitted in its original Excel format only (no PDF). Offeror shall not split the Forms document into its respective worksheets, but kept as a single document. |
| 3 | A comprehensive list of applicable priced options on Form-E |
| 4 | Per Section-B, complete electronic copies of each catalog priced and its associated list price book/sheet |
| 5 | A signed Form-A from all entities who are party to this submission and who should be offered a contract if this submission is successful. |
| 6 | The required list of References. |
| 7 | Details of "Service Organization", including locations, hours, personnel and parts/service availability |
| 8 | Complete Warranty Documentation for all products offered. |
| 9 | Completed Form-H |
| 10 | W-9 Form, completed and signed for each party to the bid. |
| 11 | CIQ Form, completed and signed for each party to the bid. The form and instructions for its use can be found at: https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm . |
| 12 | 1295 Form, completed, signed for each party to the bid. The form and instructions for its use can be found at: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm . |
| 13 | HB 89 Form for each party to the bid, completed and signed. |
| 14 | Contractor Information Form for each party to the bid, completed and signed. |

FORM-D: OFFERED ITEMS PRICING

Invitation No. "PR11-20: Parks & Recreation Equipment"

NOTE: Form-E is the document on which Offeror shall price options that fall outside of these catalogs' equipment. H-GAC has updated the options requirements. Offeror shall refer to the Section-B document included in this Solicitation packet, subsections 5.6-5.8

Offeror shall price the current version (at the time of this invitation's open bid period) of the chosen catalog(s) listed below, and shall include, per Section-B: (1) an electronic copy of each catalog bid and its associated list price sheet/book; (2) a percentage discount off list prices, on Form-D; (3) additional pricing on Form-E. If a catalog listed on this form references and is comprised of more than one distinct catalog and product line, Offeror must still show a single percentage discount.

Offeror:

For joint bids, insert the company names of all parties, using footnote references as needed

| Product Code | Manufacturer | Catalog Description | Discount Off List |
|--------------|------------------------------------|---|-------------------|
| PR11-20A01 | Action Play Systems | 2020 Action Play Playground and Site Amenities Equipment Catalog | |
| PR11-20A02 | Americana Building Products | 2020 Americana Building Products Catalog | |
| PR11-20A03 | Athletic Connection (SSG, Inc.) | 2020 The Athletic Connection Master Catalog | |
| PR11-20A04 | Barco Products | 2020 Barco Site Amenities Catalog | |
| PR11-20A05 | BCI Burke | 2020 BCI Burke Park & Recreation Catalog | |
| PR11-20A06 | Berliner Seilfabrik Play Equipment | 2020 Berliner Seilfabrik and Urban Design Lines Catalog | |
| PR11-20A07 | Bison, Inc. | 2020 Bison Sports Equipment Catalog | |
| PR11-20A08 | Cedar Forest Products | 2020 Cedar Forest Shelters Catalog | |
| PR11-20A09 | Century Industries | 2020 Century Industries Stationary and Mobile Bleachers & Stage Equipment Catalog | |
| PR11-20A10 | Classic Recreation Systems, Inc. | 2020 Classic Recreation Systems Shade and Shelter Equipment Catalog | |
| PR11-20A11 | Columbia Cascade | 2020 Playground Equipment, Site Furnishings and Fitness Equipment Catalog | |
| PR11-20A12 | Concord Industries | 2020 Concord Industries Flagpoles Catalog | |
| PR11-20A13 | Cre8Play | 2020 Cre8Play Product Catalog | |
| PR11-20A14 | Dog-On-It-Parks | 2020 Dog-On-It-Parks Catalog-Dog Park Equipment Catalog | |

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| PR11-20A15 | Douglas Sports Equipment | 2020 Douglas Sports Equipment Catalog | |
| PR11-20A16 | DuraPlay | 2020 DuraPlay Safety Surfacing Catalog | |
| PR11-20A17 | Dynamo Industries | 2020 Dynamo Playground and Basketball Equipment Lines Catalogs | |
| PR11-20A18 | ExoFit | 2020 ExoFit Outdoor Fitness Equipment Catalog | |
| PR11-20A19 | Forever Lawn | 2020 ForeverLawn Synthetic Surfacing Catalog (ForeverLawn Landscape, K9Grass, SportsGrass, Playground Grass, Splashgrass, GolfGreens, and BocceGrass product lines) | |
| PR11-20A20 | Fibar Playground Surfaces | 2020 Fibar Safety Surfacing Catalog | |
| PR11-20A21 | Freenotes Harmony Park | 2020 Freenotes Harmony Park Catalog | |
| PR11-20A22 | Frog Furnishings (Jayhawk Plastics, Inc.) | 2020 Frog Furnishings Site Furnishings Catalog | |
| PR11-20A23 | Goric Marketing Group, USA | 2020 Goric Playground Equipment and Safety Surfacing Catalogs | |
| PR11-20A24 | Haws Corp. | 2020 Haws Full Line Drinking Fountain Catalog | |
| PR11-20A25 | Hendee Enterprises | 2020 Hendee Shade and Shelter Product Catalog | |
| PR11-20A26 | Henderson Recreational Equipment | 2020 Henderson Playground and Site Amenities Catalog | |
| PR11-20A27 | Icon Shelter Systems | 2020 Icon Shade and Shelter Product Catalog | |
| PR11-20A28 | ID Sculpture | 2020 ID Sculpture Playground Climbing Sculpture Catalog | |
| PR11-20A29 | International Mulch Co. | 2020 International Mulch Company Catalog | |
| PR11-20A30 | Jensen Swing Products | 2020 Jensen Playground Equipment Catalog | |
| PR11-20A31 | Kirby Built | 2020 Kirby Built Site Amenities Catalog | |
| PR11-20A32 | Landscape Structures | 2020 Landscape Structures Catalog (Park & Playground Equipment, PlaySense, and SkyWays product lines) | |
| PR11-20A33 | Madrax (Trilary, Inc.) | 2020 Madrax Bicycle Rack Catalog | |
| PR11-20A34 | Maryland Bleachers | 2020 Maryland Bleachers Catalog | |
| PR11-20A35 | Modern Shade, LLC | 2020 Modern Shade Catalog | |
| PR11-20A36 | MyTCoat | 2020 MyTCoat Site Furnishings Catalog | |
| PR11-20A37 | National Recreation Systems (PlayCore) | 2020 NRS Bleachers Catalog | |

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| PR11-20A38 | New Earth Soils & Compost | 2020 Kiddie Cushion Engineered Wood Surfacing Catalog | |
| PR11-20A39 | Oasis Playgrounds | 2020 Water Park/Playground Equipment Catalog | |
| PR11-20A40 | Paris Equipment Manufacturing Ltd. | 2020 Paris Site Furnishing and Outdoor Exercise Equipment Catalog | |
| PR11-20A41 | Petersen Manufacturing | 2020 Petersen Site Furnishings Catalog | |
| PR11-20A42 | Pierceton Rubber | 2020 Pierceton Rubber Catalog (Dynacushion, PlayPet, DynaBoulder, DynaCurb, and Activity products lines) | |
| PR11-20A43 | Playcraft Systems (Commercial Playground Equip. Co.) | 2020 Playcraft Playground Equipment and Site Furnishings Catalogs | |
| PR11-20A44 | PlayMatta | 2020 PlayMatta Playground Surfacing Catalog | |
| PR11-20A45 | PlayMax Surfacing | 2020 PlayMax Playground Surfacing Catalog | |
| PR11-20A46 | Playsoft (Southwest Soils) | 2020 Playsoft Playground Surfacing Catalog | |
| PR11-20A47 | PlayWorld (Playworld Systems, Inc.) | 2020 PlayWorld Systems Park & Playground Solutions Catalog | |
| PR11-20A48 | PW Athletic Mfg. Co. | 2020 Patterson-Williams Athletic Equipment and Site Furnishings Catalogs | |
| PR11-20A49 | RCP Shelters, Inc. | 2020 RCP Shade and Shelter Equipment Catalog | |
| PR11-20A50 | Robertson Recreational Surfaces | 2020 TotTurf, PupTurf, SecureLock, and SplashTread Safety Surfacing Catalogs | |
| PR11-20A51 | SafeSurf | 2020 SafeSurf Surfacing Timbers and Ramps Catalog | |
| PR11-20A52 | Shade Structures, Inc. (USA Shade) | 2020 Shade Systems Complete Shade Equipment Catalog | |
| PR11-20A53 | Shade Systems | 2020 Shade Covers, Canopies, Tents, Umbrellas & Shelters Catalog | |
| PR11-20A54 | SofSurfaces | 2020 SofTILE and SofRAMP Catalog | |
| PR11-20A55 | Southwest Greens | 2020 Southwest Greens Synthetic Grass and Sports Surfacing Catalog | |
| PR11-20A56 | SportsPlay | 2020 SportsPlay Catalog | |
| PR11-20A57 | Stern-Williams Co., Inc. | 2020 Stern-Williams Drinking Fountains, Wash Stations, and Outdoor Showers Catalogs | |
| PR11-20A58 | Superior International Industries/ Superior Recreational Products | 2020 SII Catalogs (SRP Playgrounds, GFP Playgrounds, Recycled Playgrounds, Shade, Shelter, Site Amenities/Dog Play and Play Components product lines) | |

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| PR11-20A59 | Themed Concepts | 2020 Themed Concepts Playground Equipment Catalog | |
| PR11-20A60 | Thomas Steele (Trilary, Inc.) | 2020 Thomas-Steel Catalog | |
| PR11-20A61 | Vista Furnishings | 2020 Vista Site Furnishings Catalog | |
| PR11-20A62 | Vitriturf (Hanover Specialties, Inc.) | 2020 Safety and Athletic Safety Surfacing Catalog | |
| PR11-20A63 | Wabash Valley Manufacturing | 2020 Wabash Valley Catalog | |
| PR11-20A64 | Waterplay Solutions Corp. | 2020 Waterplay Waterpark Equipment Catalog | |
| PR11-20A65 | Zeager's Woodcarpet (Zeager Bros, Inc) | 2020 Zeager's Wood Carpet Catalog | |

Offeror:

Instructions: Reference Section-B

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W-9

Respondent should reference the W-9 form included in this solicitation package. It is a writeable form and should be completed and submitted with response in both printed and electronic formats.

On joint bids, a W-9 form is required for each party to the bid.

CIO

Respondent should reference the CIQ/Conflict of Interest Questionnaire form included in this solicitation package. **It is required and should be completed (even in the absence of a conflict of interest)**, with name of your company, name of signatory, and signature - submitted with response in both printed and electronic formats.

On joint bids, a CIO form is required for each party to the bid.

1295

Respondent should reference the Texas Ethics Commission document highlighted in this solicitation package ("Certificate of Interested Parties - Form 1295"). This State of Texas document is found online and must be completed in associated with this solicitation, submitted in both printed and electronic formats.

TEC site:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

On joint bids, a 1295 form is required for each party to the bid.

HB 89

Prohibition on Contracts with Companies Boycotting Israel

The 85th Texas Legislature approved new legislation, effective Sept. 1, 2017, which amends Texas Local Government Code Section 1. Subtitle F, Title 10, Government Code by adding Chapter 2270 which states that a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract

Respondent should reference the *HB 89* form included in this solicitation package. It should be completed and submitted with response in both printed and electronic formats.

On joint bids, an HB89 form is required for each party to the bid.

Contractor Information Form

Respondent shall complete the enclosed H-GAC document, "Contractor Information Form", and include in response in both printed and electronic formats, and included with the other required forms.

On joint bids, a CIF form is required for each party to the bid.

H-GAC

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

Cooperative Agreement -

SPECIAL PROVISIONS

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

ARTICLE 1: BIDS/PROPOSALS INCORPORATED

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

ARTICLE 2: END USER AGREEMENTS ("EUA")

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

ARTICLE 3: MOST FAVORED CUSTOMER CLAUSE

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

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

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

ARTICLE 4: PARTY LIABILITY

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

ARTICLE 5: GOVERNING LAW & VENUE

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

ARTICLE 6: SALES AND ORDER PROCESSING CHARGE

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

ARTICLE 7: LIQUIDATED DAMAGES

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

ARTICLE 8: INSURANCE

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

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

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

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

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

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

SAMPLE

ARTICLE 9: PERFORMANCE AND PAYMENT BONDS FOR INDIVIDUAL ORDERS

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

ARTICLE 10: CHANGE OF STATUS

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

ARTICLE 11: TEXAS MOTOR VEHICLE BOARD LICENSING

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

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

SAMPLE

H-GAC

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

Cooperative Agreement -

GENERAL PROVISIONS

This Agreement is made and entered into, by and between the Houston-Galveston Area Council hereinafter referred to as H-GAC having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027 and _____, hereinafter referred to as the Contractor, having its principal place of business at _____.

WITNESSETH:

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

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

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

ARTICLE 1: LEGAL AUTHORITY

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

ARTICLE 2: APPLICABLE LAWS

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

ARTICLE 3: INDEPENDENT CONTRACTOR

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

ARTICLE 4: WHOLE AGREEMENT

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

ARTICLE 5: SCOPE OF SERVICES

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

ARTICLE 6: PERFORMANCE PERIOD

This Agreement shall be performed during the period which begins _____ and ends _____. All services under this Agreement must be rendered within this performance period, unless directly specified under a written change or extension provisioned under Article 15, which shall be fully executed by both parties to this Agreement.

ARTICLE 7: PAYMENT OR FUNDING

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

ARTICLE 8: REPORTING REQUIREMENTS

If the Contractor fails to submit to H-GAC in a timely and satisfactory manner any report required by this Agreement, or otherwise fails to satisfactorily render performances hereunder, H-GAC may terminate this agreement with notice as identified in Article 16 of these General Provisions. H-GAC has final determination of the adequacy of performance and reporting by Contractor. Termination of this agreement for failure to perform may affect Contractor's ability to participate in future opportunities with H-GAC. The Contractor's failure to timely submit any report may also be considered cause for termination of this Agreement.

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

ARTICLE 9: INSURANCE

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

ARTICLE 10: SUBCONTRACTS and ASSIGNMENTS

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

ARTICLE 11: AUDIT

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

ARTICLE 12: EXAMINATION OF RECORDS

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

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

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

ARTICLE 13: RETENTION OF RECORDS

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

ARTICLE 14: CHANGES AND AMENDMENTS

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

ARTICLE 15: TERMINATION PROCEDURES

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

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

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

- B. *Default*

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

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

ARTICLE 16: SEVERABILITY

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

ARTICLE 17: FORCE MAJEURE

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

ARTICLE 18: CONFLICT OF INTEREST

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

ARTICLE 19: FEDERAL COMPLIANCE

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

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

ARTICLE 20: CRIMINAL PROVISIONS AND SANCTIONS

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

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

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

ARTICLE 21: INDEMNIFICATION AND RECOVERY

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

ARTICLE 22: LIMITATION OF CONTRACTOR'S LIABILITY

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

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

ARTICLE 23: TITLES NOT RESTRICTIVE

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

ARTICLE 24: JOINT WORK PRODUCT

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

ARTICLE 25: DISPUTES

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

ARTICLE 26: CHOICE OF LAW: VENUE

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

ARTICLE 27: ORDER OF PRIORITY

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

SIGNATURES:

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

Signature

Name

Title

Date

H-GAC

Signature

Name Chuck Wemple

Title Executive Director

Date

SAMPLE

Request for Taxpayer Identification Number and Certification

**Give Form to the
requester. Do not
send to the IRS.**

| | | |
|--|---|---|
| | 1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. | |
| | 2 Business name/disregarded entity name, if different from above | |
| | 3 Check appropriate box for federal tax classification; check only one of the following seven boxes: <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶ | 4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <small>(Applies to accounts maintained outside the U.S.)</small> |
| | 5 Address (number, street, and apt. or suite no.) | Requester's name and address (optional) |
| | 6 City, state, and ZIP code | |
| | 7 UsI account number(s) here (optional) | |

Identify Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

| | |
|--|--------------------------------|
| | Social security number |
| | or |
| | Employer identification number |

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the Instructions on page 3.

Sign Here Signature of U.S. person ▶

Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at www.irs.gov/fw9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
 - Form 1099-C (canceled debt)
 - Form 1099-A (acquisition or abandonment of secured property)
- Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.

By signing the filled-out form, you:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
- Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

CERTIFICATE OF INTERESTED PARTIES - FORM 1295

Certificate of Interested Parties (Form 1295 - must be filled out electronically with the Texas Ethics Commission's online filing application, printed out, signed, notarized, and attached to proposal in the response - Section TAB A)

H-G AC is required to comply with House Bill 1295, which amended the Texas Government Code by adding Section 2252.908, Disclosure of Interested Parties. Section 2252.908 prohibits H-GAC from entering into a contract resulting from this RFP with a business entity unless the business entity submits a Disclosure of Interested Parties (Form 1295) to H-GAC at the time business entity submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Texas Ethics Commission. The following **definitions** apply:

- (1) **"Business Entity"** means an entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation. TEX. GOV'T CODE § 2252.908(1).
- (2) **"Interested Party"** means a person:
 - a) who has a controlling interest in a business entity with whom H-GAC contracts; or
 - b) who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity. TEX. GOV' T CODE § 2252.908(3).
- (3) **"Controlling interest"** means:
 - a) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent;
 - b) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or
 - c) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers. *Subsection (c) does not apply to an officer of a publicly held business entity or its wholly owned subsidiaries.* TEX. ETHICS COMM. RULE 46.3(c).
- (4) **"Intermediary"** means a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:
 - a) receives compensation from the business entity for the person's participation;
 - b) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and
 - c) is not an employee of the business entity. TEX. ETHICS COMM. RULE 46.3(e).

As a "business entity," all vendors must:

W complete Form 1295 electronically with the Texas Ethics Commission using the online filing application, which can be found at https://www.ethics.state.tx.us/whatsnew/elfinfo_form1295.htm

AU vendors must complete form 1295, even if no interested parties exist

In Section 2, insert "Houston-Galveston Area Council"

In Section 3, insert the H-GAC RFP # for this proposal

1) print a copy of the completed form (make sure that it has a computer-generated certification number in the "Office Use Only" box)

U1 have an authorized agent of the business entity **sign the form**

ill **notarize the form**

ill **submit** the completed, signed, notarized Form 1295, with the certification of filing, by **attaching the form to your proposal in Section TAB A**

H-GAC must acknowledge the receipt of the filed Form 1295 by notifying the Texas Ethics Commission of the receipt of the filed Form 1295 no later than the 30th day after receipt by H-GAC. After H-GAC acknowledges the Form 1295, the Texas Ethics Commission will post the completed Form 1295 to its website with seven business days after receiving notice from H-GAC.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

Complete Nos. 1 - 4 and 6 if there are interested parties.
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

| 4 Name of Interested Party | City, State, Country (place of business) | Nature of Interest (check applicable) | |
|-------------------------------|---|---------------------------------------|--------------|
| | | Controlling | Intermediary |
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5 Check only if there is NO Interested Party. **D**

6 AFFIDAVIT I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

 Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day

of _____, 20____, to certify which, witness my hand and seal of office.

 Signature of officer administering oath

 Printed name of officer administering oath

 Title of officer administering oath

ADD ADDITIONAL PAGES AS NECESSARY

House Bill 89 Verification Form

Prohibition on Contracts with Companies Boycotting Israel

The 85th Texas Legislature approved new legislation, effective Sept. 1, 2017, which amends Texas Local Government Code Section 1. Subtitle F, Title 10, Government Code by adding Chapter 2270 which states that a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

- 1) does not boycott Israel; and
- 2) will not boycott Israel during the term of the contract

Pursuant to Section 2270.001, Texas Government Code:

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

I, (authorized official) _____,
do hereby depose and verify the truthfulness and accuracy of the contents of the statements submitted on this certification under the provisions of Subtitle F, Title 10, Government Code Chapter 2270 and that the company named below:

- 1) does not boycott Israel currently; and
- 2) will not boycott Israel during the term of the contract; and
- 3) is not currently listed on the State of Texas Comptroller's Companies that Boycott Israel List located at <https://comptroller.texas.gov/purchasing/publications/divestment.php>

Company Name

Signature of Authorized Official

Title of Authorized Official

Date

CONTRACTOR CONTACT INFORMATION

ATTENTION Houston-Galveston Area Council (H-GAC) Contractor: The following information is needed to communicate with your company concerning contract matters which may arise. To expedite the process, we ask that you provide the information requested below. **During the term of this contract, notify H-GAC in writing of any changes to this information by emailing updates to: cpcontractfax@h-gac.com**

Section I

| | |
|---------------------------------------|---------------------------------------|
| CONTRACTOR: _____ | CONTRACT #: _____ |
| Purchase Order: _____ | Invoice: _____ |
| Contact Name: _____ | Contact Name: _____ |
| Address: _____ | Address: _____ |
| City _____ State _____ Zip Code _____ | City _____ State _____ Zip Code _____ |
| Telephone No.: _____ | Telephone No.# _____ |
| Fax No. _____ | Fax No.# _____ |
| Email Address: _____ | Email Address: _____ |

Section II

CONTRACT INFORMATION:

Indicate the person (s) authorized to: sign contracts, request contract price increases, or other contract-related documents. A copy of your corporate resolution may be acceptable for Section II.

| | |
|-------------------------------------|-------------------------------------|
| 1. Printed Name of Signatory: _____ | 2. Printed Name of Signatory: _____ |
| Corporate Title: _____ | Corporate Title: _____ |
| Tel. No.: _____ | Tel. No.: _____ |
| Fax No.: _____ | Fax No.: _____ |
| Email: _____ | Email: _____ |

Section III

SALES CONTACT (Person who end users will contact for product information and pricing quotes)

| | | | |
|------------------------------|----------------|-------|-----|
| Contact Name: _____ | Title: _____ | | |
| Address: _____ | | | |
| Street | City | State | Zip |
| Telephone No.: _____ | Fax No.: _____ | | |
| Mobile No.: (optional) _____ | Email: _____ | | |

House Bill 89 Verification Form

Prohibition on Contracts with Companies Boycotting Israel

The 85th Texas Legislature approved new legislation, effective Sept. 1, 2017, which amends Texas Local Government Code Section 1. Subtitle F, Title 10, Government Code by adding Chapter 2270 which states that a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

- 1) does not boycott Israel; and
- 2) will not boycott Israel during the term of the contract

Pursuant to Section 2270.001, Texas Government Code:

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

I, (authorized official) J_e_f_f_B_a_r_b_e_r _____
do hereby depose and verify the truthfulness and accuracy of the contents of the statements submitted on this certification under the provisions of Subtitle F, Title 10, Government Code Chapter 2270 and that the company named below:

- 1) does not boycott Israel currently; and
- 2) will not boycott Israel during the term of the contract; and
- 3) is not currently listed on the State of Texas Comptroller's Companies that Boycott Israel List located at <https://comptroller.texas.gov/purchasing/publications/divestment.php>

Playground Specialists, Inc

Company Name

Signature of Authorized Official

President

Title of Authorized Official

6/16/2020

Date

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
 2020-623942

Date Filed:
 05/27/2020

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.
 Playground Specialists, Inc
 Thurmont, MD United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.
 Houston-Galveston Area Council

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.
 H-GACBuy RFP PR11-20
 Parks and Recreation Equipment

| 4 | Name of Interested Party | City, State, Country (place of business) | Nature of interest (check applicable) | |
|---|--------------------------|--|---------------------------------------|--------------|
| | | | Controlling | Intermediary |
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| | | | | |

5 Check only if there is NO Interested Party. **0**

6 UNSWORN DECLARATION

My name is Jeff Barber and my date of birth is May 14, 1976
 My address is 11700 Whates Lane, Thurmont, MD, 21788 USA
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Frederick County, State of Maryland, on **the** day of June, **20** .
(month) (year)

11/11/20
 I am a duly authorized agent of business entity
(Declarant)

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

OFFICE USE ONLY

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

Date Received

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

1J Name of vendor who has a business relationship with local governmental entity.

Playground Specialists, Inc

2I Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

1I Name of local government officer about whom the information is being disclosed.

n/a

Name of Officer

1j Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Over No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Over No

Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

None

6 Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

2J

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06/16/20

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CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Go to www.irs.gov/FormW9 for instructions and the latest information.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

Playground Specialists, inc.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

- Individual sole proprietor or single-member LLC C Corporation S Corporation Partnership Trust/estate
- Limited liability company Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶
- Note:** Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is **not** disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.
- Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting _____

(if any)

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

29 Apples Church Rd.

6 City, state, and ZIP code

Thurmont, MD 21788

Requester's name and address (optional)

7 List account number(s) here (optional)

— Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. **111** TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

I Social security number

52 - 2 1 3 2 8 8 7

or Employer identification number

52 - 2 1 3 2 8 8 7

Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here

Signature of U.S. person ▶

[Handwritten Signature]

Date ▶

1/2020

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

FORM-A: OFFEROR IDENTIFICATION & AUTHORIZED SIGNATORY
(DO NOT **handwrite** this Form. Information must be typed in.)

Invitation No.: PR11-20

Invitation Title: Parks & Recreation Equipment

Offeror Company: Playground Specialists, Inc

Offeror Status: **Manufacturer** **Dealer/Distributor** **Other**
 Single Offeror Acting Alone Or **Multiple Offerors**

Response Type(1): _____

Contract Signatory(2): Jeff Barber

Title: President

Mailing Address(3): 29 Apples Church Rd Thurmont MD,21788
Street/PO Box City State & Zip

Physical Address: 29 Apples Church Rd Thurmont MD, 21788
Street City State & Zip

Phone: 800-385-0075 Fax: 301-271-9239

Email Address: jeff @ playspec.com

Federal Tax ID No.: 52-2132887

Web Page URL: www.playspec.com

- (1) If Joint Offering, all parties must submit a signed Form A. A contract will be offered to each.
(2) Person who will sign final contract documents if an award is made.
(3) Address to which final contract documents would be sent for signature.

Member Contact Information

Contact Person (4): Brad Stokley

Title: Sales Manager

Mailing Address: 29 Apples Church Rd Thurmont MD,21788
Street/PO Box City State&Zip

Physical Address: 29 Apples Church Rd Thurmont MD,21788
Street City State &Zip

Toll Free Phone: 800-385-0075 Fax: 301-271-9239

Email Address: brad@playspec.com

- (4) Person who End Users will contact for product information and pricing quotations.

The Signatory below, on behalf of Offeror:

- Acknowledges having thoroughly reviewed the Invitation;
- Attests to having the authority to sign this response and commit Offeror to honor all requirements;
- Makes, under penalty of perjury, all required Offeror Certifications as detailed in General Terms;
- Certifies that all information provided in this Response is true and correct.

Signature: _____

Title: President

Printed Name: Jeff Barber

Date: 5/27/2020

FORM-D: OFFERED ITEMS PRICING**Invitation No. "PR11-20: Parks & Recreation Equipment"**

NOTE: Form-E is the document on which Offeror shall price options that fall outside of these catalogs' equipment. H-GAC has updated the options requirements. Offeror shall refer to the Section-B document included in this Solicitation packet, subsections 5.6-5.8

Offeror shall price the current version (at the time of this invitation's open bid period) of the chosen catalog(s) listed below, and shall include, per Section-B: (1) an electronic copy of each catalog bid and its associated list price sheet/book; (2) a percentage discount off list prices, on Form-D; (3) additional pricing on Form-E. If a catalog listed on this form references and is comprised of more than one distinct catalog and product line, Offeror must still show a single percentage discount.

Offeror: Playground Specialists, Inc

For joint bids, insert the company names of all parties, using footnote references as needed

| Product Code | Manufacturer | Catalog Description | Discount Off List |
|---------------------|------------------------------------|---|--------------------------|
| PR11-20A01 | Action Play Systems | 2020 Action Play Playground and Site Amenities Equipment Catalog | |
| PR11-20A02 | Americana Building Products | 2020 Americana Building Products Catalog | |
| PR11-20A03 | Athletic Connection (SSG, Inc.) | 2020 The Athletic Connection Master Catalog | |
| PR11-20A04 | Barco Products | 2020 Barco Site Amenities Catalog | |
| PR11-20A05 | BCI Burke | 2020 BCI Burke Park & Recreation Catalog | |
| PR11-20A06 | Berliner Seilfabrik Play Equipment | 2020 Berliner Seilfabrik and Urban Design Lines Catalog | 6.00% |
| PR11-20A07 | Bison, Inc. | 2020 Bison Sports Equipment Catalog | |
| PR11-20A08 | Cedar Forest Products | 2020 Cedar Forest Shelters Catalog | |
| PR11-20A09 | Century Industries | 2020 Century Industries Stationary and Mobile Bleachers & Stage Equipment Catalog | |
| PR11-20A10 | Classic Recreation Systems, Inc. | 2020 Classic Recreation Systems Shade and Shelter Equipment Catalog | 6.00% |
| PR11-20A11 | Columbia Cascade | 2020 Playground Equipment, Site Furnishings and Fitness Equipment Catalog | |
| PR11-20A12 | Concord Industries | 2020 Concord Industries Flagpoles Catalog | |
| PR11-20A13 | Cre8Play | 2020 Cre8Play Product Catalog | |
| PR11-20A14 | Dog-On-It-Parks | 2020 Dog-On-It-Parks Catalog-Dog Park Equipment Catalog | |

| | | | |
|------------|---|---|-------|
| PR11-20A15 | Douglas Sports Equipment | 2020 Douglas Sports Equipment Catalog | |
| PR11-20A16 | DuraPlay | 2020 DuraPlay Safety Surfacing Catalog | |
| PR11-20A17 | Dynamo Industries | 2020 Dynamo Playground and Basketball Equipment Lines Catalogs | |
| PR11-20A18 | ExoFit | 2020 ExoFit Outdoor Fitness Equipment Catalog | |
| PR11-20A19 | Forever Lawn | 2020 ForeverLawn Synthetic Surfacing Catalog (ForeverLawn Landscape, K9Grass, SportsGrass, Playground Grass, Splashgrass, GolfGreens, and BocceGrass product lines) | |
| PR11-20A20 | Fibar Playground Surfaces | 2020 Fibar Safety Surfacing Catalog | |
| PR11-20A21 | Freenotes Harmony Park | 2020 Freenotes Harmony Park Catalog | |
| PR11-20A22 | Frog Furnishings (Jayhawk Plastics, Inc.) | 2020 Frog Furnishings Site Furnishings Catalog | |
| PR11-20A23 | Goric Marketing Group, USA | 2020 Goric Playground Equipment and Safety Surfacing Catalogs | |
| PR11-20A24 | Haws Corp. | 2020 Haws Full Line Drinking Fountain Catalog | |
| PR11-20A25 | Hendee Enterprises | 2020 Hendee Shade and Shelter Product Catalog | |
| PR11-20A26 | Henderson Recreational Equipment | 2020 Henderson Playground and Site Amenities Catalog | |
| PR11-20A27 | Icon Shelter Systems | 2020 Icon Shade and Shelter Product Catalog | |
| PR11-20A28 | ID Sculpture | 2020 ID Sculpture Playground Climbing Sculpture Catalog | |
| PR11-20A29 | International Mulch Co. | 2020 International Mulch Company Catalog | |
| PR11-20A30 | Jensen Swing Products | 2020 Jensen Playground Equipment Catalog | |
| PR11-20A31 | Kirby Built | 2020 Kirby Built Site Amenities Catalog | |
| PR11-20A32 | Landscape Structures | 2020 Landscape Structures Catalog (Park & Playground Equipment, PlaySense, and SkyWays product lines) | |
| PR11-20A33 | Madrax (Trilary, Inc.) | 2020 Madrax Bicycle Rack Catalog | |
| PR11-20A34 | Maryland Bleachers | 2020 Maryland Bleachers Catalog | |
| PR11-20A35 | Modern Shade, LLC | 2020 Modern Shade Catalog | |
| PR11-20A36 | MyTCoat | 2020 MyTCoat Site Furnishings Catalog | 6.00% |
| PR11-20A37 | National Recreation Systems (PlayCore) | 2020 NRS Bleachers Catalog | |

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|------------|--|---|--------|
| PR11-20A38 | New Earth Soils & Compost | 2020 Kiddie Cushion Engineered Wood Surfacing Catalog | |
| PR11-20A39 | Oasis Playgrounds | 2020 Water Park/Playground Equipment Catalog | |
| PR11-20A40 | Paris Equipment Manufacturing Ltd. | 2020 Paris Site Furnishing and Outdoor Exercise Equipment Catalog | 6.00% |
| PR11-20A41 | Petersen Manufacturing | 2020 Petersen Site Furnishings Catalog | |
| PR11-20A42 | Pierceton Rubber | 2020 Pierceton Rubber Catalog (Dynacushion, PlayPet, DynaBoulder, DynaCurb, and Activity products lines) | |
| PR11-20A43 | Playcraft Systems (Commercial Playground Equip. Co.) | 2020 Playcraft Playground Equipment and Site Furnishings Catalogs | |
| PR11-20A44 | PlayMatta | 2020 PlayMatta Playground Surfacing Catalog | |
| PR11-20A45 | PlayMax Surfacing | 2020 PlayMax Playground Surfacing Catalog | |
| PR11-20A46 | Playsoft (Southwest Soils) | 2020 Playsoft Playground Surfacing Catalog | |
| PR11-20A47 | PlayWorld (Playworld Systems, Inc.) | 2020 PlayWorld Systems Park & Playground Solutions Catalog | 10.00% |
| PR11-20A48 | PW Athletic Mfg. Co. | 2020 Patterson-Williams Athletic Equipment and Site Furnishings Catalogs | |
| PR11-20A49 | RCP Shelters, Inc. | 2020 RCP Shade and Shelter Equipment Catalog | |
| PR11-20A50 | Robertson Recreational Surfaces | 2020 TotTurf, PupTurf, SecureLock, and SplashTread Safety Surfacing Catalogs | |
| PR11-20A51 | SafeSurf | 2020 SafeSurf Surfacing Timbers and Ramps Catalog | |
| PR11-20A52 | Shade Structures, Inc. (USA Shade) | 2020 Shade Systems Complete Shade Equipment Catalog | |
| PR11-20A53 | Shade Systems | 2020 Shade Covers, Canopies, Tents, Umbrellas & Shelters Catalog | |
| PR11-20A54 | SofSurfaces | 2020 SofTILE and SofRAMP Catalog | |
| PR11-20A55 | Southwest Greens | 2020 Southwest Greens Synthetic Grass and Sports Surfacing Catalog | |
| PR11-20A56 | SportsPlay | 2020 SportsPlay Catalog | |
| PR11-20A57 | Stern-Williams Co., Inc. | 2020 Stern-Williams Drinking Fountains, Wash Stations, and Outdoor Showers Catalogs | |
| PR11-20A58 | Superior International Industries/ Superior Recreational Products | 2020 SII Catalogs (SRP Playgrounds, GFP Playgrounds, Recycled Playgrounds, Shade, Shelter, Site Amenities/Dog Play and Play Components product lines) | |

| | | | |
|------------|--|---|--|
| PR11-20A59 | Themed Concepts | 2020 Themed Concepts Playground Equipment Catalog | |
| PR11-20A60 | Thomas Steele (Trilary, Inc.) | 2020 Thomas-Steel Catalog | |
| PR11-20A61 | Vista Furnishings | 2020 Vista Site Furnishings Catalog | |
| PR11-20A62 | Vitriturf (Hanover Specialties, Inc.) | 2020 Safety and Athletic Safety Surfacing Catalog | |
| PR11-20A63 | Wabash Valley Manufacturing | 2020 Wabash Valley Catalog | |
| PR11-20A64 | Waterplay Solutions Corp. | 2020 Waterplay Waterpark Equipment Catalog | |
| PR11-20A65 | Zeager's Woodcarpet (Zeager Bros, Inc) | 2020 Zeager's Wood Carpet Catalog | |

| Form-E | Parks & Recreation Equipment | PR11-20 |
|--|---|---------------|
| Published Options | | |
| OFFEROR: | Playground Specialists, Inc | |
| Notes: (Important) | <p>(1) Use a single Form-E for ALL options and quote each on a single, separate line. Add or insert additional lines as necessary.</p> <p>(2) Completely describe each item. Include the manufacturer's code or part number. Each item listed MUST have a unique code or part number so that it can be identified in any subsequent contract.</p> <p>(3) Options which are upgrades/downgrades of a Form-D Item should be priced at the differential amount between the cost of the Form D Item and the upgrade/downgrade option.</p> | |
| <p>NOTE: Form-E is the document on which Offeror shall price options that fall outside of these catalogs' equipment. HGAC has updated the options requirements. Offeror shall refer to the Section-B document included in this solicitation packet, subsections 5.6 - 5.8 for guidelines.</p> | | |
| Code or Part No. | Option Description | Offered Price |
| PR11-20A06install | Installation of Equipment (percentage of list price) | 40% |
| PR11-20A06access | Additional installation charge for poor access to site (percentage of list price) | 30% |
| PR11-20A06demo | Demolition and Removal of Existing Equipment (per 1/2 day) | \$2,500 |
| PR11-20A06prep | Site Prep of New Play Space (per 1/2 day) | \$2,500 |
| PR11-20A06plan | Planning and Deisgn for New Play Space (per hour) | \$200 |
| PR11-20A06fiber | Engineered Wood Fiber (per cy) | \$23 |
| PR11-20A06pip | Poured-in-Place Rubber Surfacing (per sq ft) | \$20 |
| PR11-20A06tile | Rubber Tile Safety Surfacing (per sq ft) | \$23 |
| PR11-20A06custom | Customization of Equipment (percentage of list price) | 40% |
| PR11-20A06triax | Triax 2015 Drop Testing of Safety Surfacing (per location) | \$800 |
| PR11-20A10install | Installation of Equipment (percentage of list price) | 50% |
| PR11-20A10access | Additional installation charge for poor access to site (percentage of list price) | 25% |
| PR11-20A10footing | Engineered Footings (per footing) | \$2,000 |
| PR11-20A10prep | Site Prep for New Equipment (per 1/2 day) | \$2,500 |
| PR11-20A10crete | 4" Thick Concrete Pad and Stone Base (per sq ft) | \$25 |
| PR11-20A10custom | Customization of Equipment (percentage of list price) | 40% |
| PR11-20A36install | Installation of Equipment (percentage of list price) | 75% |
| PR11-20A36access | Additional installation charge for poor access to site (percentage of list price) | 50% |
| PR11-20A36demo | Demolition and Removal of Existing Equipment (per 1/2 day) | \$2,500 |
| PR11-20A36prep | Site Prep for New Equipment (per 1/2 day) | \$2,500 |
| PR11-20A36crete | 4" Thick Concrete Pad and Stone Base (per sq ft) | \$25 |
| PR11-20A40install | Installation of Equipment (percentage of list price) | 50% |
| PR11-20A40access | Additional installation charge for poor access to site (percentage of list price) | 25% |
| PR11-20A40demo | Demolition and Removal of Existing Equipment (per 1/2 day) | \$2,500 |
| PR11-20A40prep | Site Prep for New Equipment (per 1/2 day) | \$2,500 |
| PR11-20A40crete | 4" Thick Concrete Pad and Stone Base (per sq ft) | \$25 |
| PR11-20A47install | Installation of Equipment (percentage of list price) | 30% |
| PR11-20A47access | Additional installation charge for poor access to site (percentage of list price) | 30% |
| PR11-20A47demo | Demolition and Removal of Existing Equipment (per 1/2 day) | \$2,500 |
| PR11-20A47prep | Site Prep of New Play Space (per 1/2 day) | \$2,500 |
| PR11-20A47plan | Planning and Deisgn for New Play Space (per hour) | \$200 |
| PR11-20A47fiber | Engineered Wood Fiber (per cy) | \$23 |
| PR11-20A47pip | Poured-in-Place Rubber Surfacing (per sq ft) | \$20 |
| PR11-20A47tile | Rubber Tile Safety Surfacing (per sq ft) | \$23 |
| PR11-20A47custom | Customization of Equipment (percentage of list price) | 35% |
| PR11-20A47triax | Triax 2015 Drop Testing of Safety Surfacing (per location) | \$800 |
| PR-20A47footing | Playshade Footing (per footing) | \$1,000 |
| PR-20A47timber | Two Tier 6 x 6 Timbers Installed (per lin ft) | \$18 |
| PR-20A47sand | Play Sand Installed (per half pallet - 20 cu ft) | \$325 |
| PR-20A47walk | Concrete Walkway Installed - includes stone base (per sq ft) | \$25 |
| PR-20A47mound | Play Mound Installed (per sq ft) | \$32.00 |



Recreation Design & Installation, Site Amenities and Safety Surfacing

Form H - Marketing Plan for HGACBuy

At Playground Specialists, Inc we have a marketing team that plays a vital role in promoting our products, services, and mission. Our continued training, marketing and innovation makes our team one of the best in our industry. Our team plans to market the HGAC Cooperative Purchasing Program to all eligible customers to make the buying process easier. As current contract holders for the past 2 years, our team has successfully added numerous end users to the contract. Our 7 outside sales representatives will have all the tools they need to educate customers and promote the contract.

Our sales team hosts various 'lunch and learn presentations' throughout the year with customers and decision makers to showcase products and services. We will include information about the purchasing contract in these presentations. Our sales representatives also lead conversations with our flyers and brochures featuring HGACBuy (upon approval from the HGACBuy Marketing Team). An example of our PlaySpec HGACBuy flyer is provided in our submission.

In addition to meetings done by our individual sales representatives, our marketing team sends mass email newsletters to our customers twice a week. Combined with our CRM software, we can target our HGACBuy eligible customers and promote the contract directly to them. HGACBuy and frequently asked questions will also be displayed on our website and featured on our social media networks.

At Playground Specialists, Inc we have the experience and capacity to complete projects of all sizes and complexity. Our target marketing to current and potential end users will have a successful impact and provide them with the simplest way to bring play to their areas.

CONTRACTOR CONTACT INFORMATION

ATTENTION Houston-Galveston Area Council (H-GAC) Contractor: The following information is needed to communicate with your company concerning contract matters which may arise. To expedite the process, we ask that you provide the information requested below. **During the term of this contract, notify H-GAC in writing of any changes to this information by emailing updates to: cpcontractfax@h-gac.com**

Section I

| | |
|--|--|
| CONTRACTOR: <u>Playground Specialists, Inc</u> | CONTRACT #: <u>PR11-20</u> |
| Purchase Order: | Invoice: |
| Contact Name: <u>Brad Stokley</u> | Contact Name: <u>Diane Daniels</u> |
| Address: <u>29 Apples Church Rd</u> | Address: <u>29 Apples Church Rd</u> |
| Thurmont MD 21788 | Thurmont MD 21788 |
| <i>City State Zip Code</i> | <i>City State Zip Code</i> |
| Telephone No.: <u>800-385-0075</u> | Telephone No.# <u>800-385-0075</u> |
| Fax No. <u>301-271-9239</u> | Fax No.# <u>301-271-9239</u> |
| Email Address: <u>brad@playspec.com</u> | Email Address: <u>diane@playspec.com</u> |

Section II

CONTRACT INFORMATION:

Indicate the person (s) authorized to: sign contracts, request contract price increases, or other contract-related documents. A copy of your corporate resolution may be acceptable for Section II.

| | |
|--|--|
| 1. Printed Name of Signatory: <u>Jeff Barber</u> | 2. Printed Name of Signatory: <u>Ben Tilley</u> |
| Corporate Title: <u>President</u> | Corporate Title: <u>Vice President</u> |
| Tel. No.: <u>800-385-0075</u> | Tel. No.: <u>800-385-0075</u> |
| Fax No.: <u>301-271-9239</u> | Fax No.: <u>301-271-9239</u> |
| Email: <u>jeff@playspec.com</u> | Email: <u>ben@playspec.com</u> |

Section III

SALES CONTACT (Person who end users will contact for product information and pricing quotes)

| | |
|--|--|
| Contact Name: <u>Brad Stokley</u> | Title: <u>Sales Manager</u> |
| Address: <u>29 Apples Church Rd</u> | Thurmont MD 21788 |
| <u>Street</u> | <u>City State Zip</u> |
| Telephone No.: <u>800-385-0075</u> | Fax No.: <u>301-271-9239</u> |
| Mobile No.: (optional) <u>301-748-9132</u> | Email: <u>brad@playspec.com</u> |



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

06/12/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | | | |
|--|--|--|--|
| PRODUCER Insurance Brokers of Maryland P.O. Box 1320 Emmitsburg MD 21727 | | CONTACT NAME: Jayme Koontz PHONE (A/C, No, Ext): (301) 447-2565 E-MAIL ADDRESS: jayme.koontz@ibmofmd.com FAX (A/C, No): (301) 447-2567 | |
| INSURED Playground Specialists, Inc. 29 Apples Church Road Thurmont MD 21788 | | INSURER(S) AFFORDING COVERAGE INSURER A: Cincinnati Spec. Underwriters NAIC # 13037 INSURER B: Westfield Group 24112 INSURER C: Cincinnati Insurance 10677 INSURER D: Accident Fund General Ins Co. 12304 INSURER E: Markel American Insurance Company 28932 INSURER F: | |

COVERAGES CERTIFICATE NUMBER: 2020-2021 Master REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|----------|---|-----------|----------|----------------|-------------------------|-------------------------|--|------------------|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: | | | CSU0096052 | 03/10/2020 | 03/10/2021 | EACH OCCURRENCE | \$ 1,000,000 |
| | | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) | \$ 100,000 |
| | | | | | | | MED EXP (Any one person) | \$ 5,000 |
| | | | | | | | PERSONAL & ADV INJURY | \$ 1,000,000 |
| | | | | | | | GENERAL AGGREGATE | \$ 2,000,000 |
| | | | | | | | PRODUCTS - COMP/OP AGG | \$ 2,000,000 |
| | | | | | | | | \$ |
| B | AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY | | | TRA017702T | 03/10/2020 | 03/10/2021 | COMBINED SINGLE LIMIT (Ea accident) | \$ 1,000,000 |
| | | | | | | | BODILY INJURY (Per person) | \$ |
| | | | | | | | BODILY INJURY (Per accident) | \$ |
| | | | | | | | PROPERTY DAMAGE (Per accident) | \$ |
| | | | | | | | | \$ |
| C | UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0 | | | EXS0015535 | 03/10/2020 | 03/10/2021 | EACH OCCURRENCE | \$ 1,000,000 |
| | | | | | | | AGGREGATE | \$ 1,000,000 |
| | | | | | | | | \$ |
| D | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | Y/N | N/A | WCV6184482 | 03/10/2020 | 03/10/2021 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER | |
| | | | | | | | E.L. EACH ACCIDENT | \$ 1,000,000 |
| | | | | | | | E.L. DISEASE - EA EMPLOYEE | \$ 1,000,000 |
| | | | | | | | E.L. DISEASE - POLICY LIMIT | \$ 1,000,000 |
| E | Excess Liability- Excess of GL Only | | | MKLM7EUE100300 | 03/10/2020 | 03/10/2021 | \$4,000,000 Ea. Occ. | \$4,000,000 Agg. |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

HGACBuy Cooperative Purchasing Program
 3555 Timmons
 Suite 120
 Houston TX 77027

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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Contract Number: PGB2100107
Parks and Recreation Equipment

Piggyback Agreement

Anne Arundel County
AND
Playground Specialists Inc

February 01, 2021 - October 31, 2021

General Information

| | |
|-----------------------------------|--------------------------------|
| Contract Type | Piggyback Agreement |
| Contract Number | PGB2100107 |
| Contract Visibility/Access | Private |
| Status | Vendor Signature Required |
| Title | Parks and Recreation Equipment |
| Detailed Description | TBD |
| Multi Contractor Contract | No |
| P-Card Accepted | No |
| Contract Administrator | Thomas Sanford |
| Email | phsanf20@aacounty.org |
| Organization | Anne Arundel County |
| Solicitation Number | |

Commodity & Service Codes

| Code | Description |
|-------|--|
| 65000 | PARK, PLAYGROUND, RECREATIONAL AREA AND SWIMMING POOL EQUIPMENT AND SUPPLIES |
| 96701 | Athletic, Sporting, Recreational, Fishing, Hunting, and Camping Equipment Manufacturing Services |

Contract Diversity Information

| Diversity | Allocation |
|-----------|------------|
|-----------|------------|

Supplier Diversity Information

| Name | Diversity | Allocation |
|------|-----------|------------|
|------|-----------|------------|

Payment Information

| | |
|----------------------|----------------------------|
| Pricing Type | Blanket Purchase Agreement |
| Total Value | Estimate |
| Value | \$0.00 |
| Payment Terms | Net 30 Days |

Delivery Terms
Delivery Notes

Free On Board Destination

Contract Period

| | |
|------------------------|------------------|
| Issue Date | February 1, 2021 |
| Award Date | February 1, 2021 |
| Effective Date | February 1, 2021 |
| Expiration Date | October 31, 2021 |

Contract Details

AGREEMENT - PIGGYBACK

Agreement

THIS AGREEMENT, made this 29th day of January, 2021 by and between Anne Arundel County, Maryland (the "County"), and Playground Specialists, Inc (the "Contractor").

WHEREAS, the County is desirous of having the Contractor provide Park and Recreation Equipment services, as herein described; and

WHEREAS, the Contractor is a party to Contract No. PR11-20 with Houston Galveston Area Council (H-GAC) dated November 2, 2020, related to "Park and Recreation Equipment" (the "Contract"), a copy of which is attached hereto as Attachment A; and

WHEREAS, the Contractor has agreed to provide goods and services within the scope of the Contract to the County at the same prices chargeable to Houston Galveston Area Council (H-GAC); and

WHEREAS, the goods and/or services required by the County and that the County seeks to obtain from the Contractor are within the scope of the Contract; and

WHEREAS, it is the purpose of this Agreement to describe the formal rights and obligations of the parties;

NOW, THEREFORE, WITNESSETH that, for the consideration herein indicated, and in consideration of the mutual promises and covenants set forth in this Agreement, the Contractor and the County agree as follows:

1. GOODS AND/OR SERVICES TO BE PERFORMED BY THE CONTRACTOR

1.1. Upon the request of the County and pursuant to the blanket orders, the Contractor shall provide goods and perform services as described in the Contract at the discount set forth in the Contract and outlined in Attachment A to this Agreement, which is incorporated herein and are made part hereof (the "Work").

1.2. As a part of the Work to be performed, the Contractor shall furnish reports to the County from time to time as requested and in such form and number as may be requested by the County.

1.3. The Contractor shall not disclose any information relating to the Work to any person or entity not entitled to receive it.

1.4. The reports required hereunder and any other documents, materials, or information related to the Work shall be considered the property of the County, and no use of the reports, documents, materials, or information shall be made without the written consent of the County.

1.5. Responses to requests for information related to the Work shall be made pursuant to and in accordance with the Maryland Public Information Act, Maryland State Government Code Annotated, §§ 10-611, et seq.

2. TERM OF AGREEMENT

The term of this Agreement is from February 1, 2021, through October 31

2021 with the option to renew for one (1) one-year periods at the sole discretion of the County.

If any term of this Agreement extends beyond the County's current fiscal year, this Agreement is conditioned upon and subject to appropriation and availability of funds for that part of the term of this Agreement that extends beyond the County's current fiscal year, and this Agreement may be terminated by the County.

3. PAYMENT FOR SERVICE

3.1. This Agreement set forth is essentially a price agreement and the execution of this Blanket Agreement or the receipt of a Purchase Order does not authorize the Successful Bidder to deliver or release any material to any department in the County. Authorization for materials to be delivered shall be by Blanket Order Release issued by the Purchasing Agent. The County shall pay the Contractor for Work performed under this Agreement in accordance with the fee schedule set forth in Attachment A. Work under this Agreement shall be performed pursuant to Blanket Order Release Purchase Orders issued by the Purchasing Agent. The Finance Officer shall certify availability and encumbrance of funds for each Blanket Order Release Purchase Order issued pursuant to this Agreement, and no payment shall be made to the Contractor absent such certification.

3.2. Payment for Work performed under this Agreement shall be based on invoices sent to the County's Office of Finance. Two copies of an itemized invoice containing the applicable Purchase Order number shall be submitted to:

Office of Finance
Anne Arundel County, Maryland
P. O. Box 2700
Annapolis, Maryland 21401

Each invoice submitted for payment shall include, for each person who performed Work, the person's name and position, the rate being charged, the number of hours being charged, and the total charge.

If the invoice includes any reimbursable expenses, all documentation of the expenses shall be included with the invoice.

Upon approval of the County's Purchasing Officer, the County shall issue payment.

Payment shall be made via ACH Transfer. The County reserves the right to deduct the total amount of any debts owed to the County from any payments issued pursuant to this Agreement.

4. ASSIGNMENT OR SUBSTITUTION

The County and the Contractor bind themselves, their partners, successors, assignees, and legal representatives to this Agreement.

Neither the County nor the Contractor shall assign, sublet, or transfer any interest in this Agreement without the prior written consent of the other.

In the event that death or other cause necessitates substitution by the County of another party in place of the Contractor to complete services under this Agreement, the County's Purchasing Officer shall determine the division of the fee between such substitute party and the Contractor.

5. INSURANCE

5.1. The Contractor shall purchase and maintain during the term of this Agreement Commercial General Liability Insurance, Business Automobile Liability Insurance, and Workers' Compensation Insurance with limits of the amount set forth below:

a) Commercial General Liability Insurance with liability limits of at least \$1,000,000 combined single limit coverage on an occurrence basis covering all premises and operations and including Personal Injury, Independent Contractor, Contractual Liability, and Products and Completed Operations.

b) Business Automobile Liability Insurance with liability limits of at least \$1,000,000 combined single limit to include owned, non-owned, and hired vehicles; and

c) Workers' Compensation Insurance with statutory benefits

as required Maryland law and, when required, the U. S. Longshoremen's and Harbor Workers' Compensation Act, including standard Other States coverage; Employers' Liability coverage with limits of at least \$100,000 each accident/\$100,000 each employee disease/\$500,000 disease policy limit.

5.2. The Contractor shall provide the County with Certificates of Insurance evidencing the coverages required above. The Certificates of Insurance shall name Anne Arundel County, Maryland, its agents, servants, and employees as additional insureds under the Commercial Liability policy of insurance for the Work performed hereunder. The Contractor shall provide the Certificates of Insurances before commencing any Work under this Agreement.

The Contractor acknowledges that the provision of insurance required herein does not relieve the Contractor of any responsibilities or obligations by the Contractor under this Agreement or for which Contractor may be liable by law or otherwise.

5.3. Contractor shall advise the County at fax #

410-222-7624 and by first-class, certified mail within two (2) business days of any cancellation, non-renewal, or other termination of, or any substantive change to any insurance policy providing or represented as providing the coverages mandated herein. Failure to do so shall be construed as a material breach of this Agreement.

6. ASSUMPTION OF RISK AND INDEMNIFICATION

The Contractor hereby agrees to indemnify and save harmless and defend the County, its agents, servants, and employees, from all liability for loss, damage, or injury to person or property in any manner arising out of or incident to the Work performed or to be performed under this Agreement.

7. INDEPENDENT CONTRACTOR

In the performance of this Agreement, the Contractor, including its employees, agents, and subcontractors, shall act solely as an independent contractor, and nothing contained in or implied by this Agreement shall be construed at any time to create any other relationship between the County and the Contractor, including employer and employee, partnership, principal and agent, or joint venturer.

8. NONDISCRIMINATION

The Contractor assures the County that it shall not discriminate against any person in any of its activities with regard to membership policies, employment practices, or in the provision of services on the basis of gender identity, race, color, national origin, religion, ancestry, sex, age, or disability. The Contractor shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in U. S. Department of Labor Regulations 41CFR Part 60. The Contractor must bind its subcontractors to the provisions of this section.

9. DISPUTES

All questions involving the interpretation of the Agreement, which cannot be settled between the Contractor and the County shall be referred to the County Attorney, whose decision on the matter shall be final.

10. TERMINATION

10.1. The County may terminate this Agreement at any time, with or without cause.

10.2. The Contractor shall be provided 30 days' notice of any termination not for cause and shall only perform such work during the 30 day notice period that is authorized in writing by the County's Purchasing Officer.

10.3. The Contractor shall be provided 7 days' notice of any termination for cause, which shall include the Contractor's failure to substantially perform in accordance with the terms of this Agreement through no fault of the County.

During the 7 day period, the Contractor shall only perform such Work as is authorized in writing by the County's Purchasing Officer.

10.4. This Agreement may be terminated by the County upon at least 7 days' notice to the Contractor in the event that: (1) the Work is permanently abandoned by the County; (2) continued Work is deemed by the County, in its sole discretion, not to be in the best interests of the County; or (3) monies are no longer available or are not appropriated to fund the Work being performed or to be performed under this Agreement.

10.5. In the event that this Agreement is terminated in accordance with this Agreement, the Contractor shall be compensated for all services properly performed to the termination date, together with reimbursable expenses then due. If the Contract is terminated for cause, the County shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice or termination less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor shall remain liable after termination, and the County may take all steps necessary to collect damages.

11. HIPAA

If a Business Associate Agreement under the Health Insurance Portability and Accountability Act of 1996, and regulations enacted pursuant thereto (collectively "HIPAA"), is deemed necessary by the County based on the Work to be performed hereunder, the Contractor agrees to enter into a Business Associate Agreement as an Addendum to this Agreement.

12.INTERPRETATION

The interpretation of this Agreement shall be governed by the laws of the State of Maryland.

13.INTEGRATION

This Agreement and Attachments A and B represent the full and final understanding of the parties, and no other understanding or representations, oral or written, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto unless in writing and signed by the parties.

If any term of this Agreement conflicts with any term of Attachments A or B to this Agreement, then the term of this Agreement shall control. If any term of Attachment B conflicts with any term of Attachment A, the term of Attachment B shall apply.

14.AUDIT OF THE CONTRACTOR

14.1. The Contractor shall retain in original form, format, and medium all books, records, and documents from the date of their inception. This shall include, but not be limited to, cost or pricing data relating to the Contract and the Contractor's operations, including perpetual inventory records of equipment for a period of at least three (3) years following the date of final payment by the County. The Contractor shall make these records available for inspection and audit by the authorized representative of the County during normal business hours. The Contractor shall receive the County's written authorization for any request to change the form, format, or medium of any record, or for earlier destruction of any record. The Contractor shall comply with County notification that a record shall be retained for a longer period.

14.2. The County may audit at any time during the term of the Contract and for a period of at least three (3) years after the date of final payment by the County the Contractor's books and records relating to any work performed under this IFB and any resulting contract, including, but not limited to:

- Cost or pricing data submitted by the Contractor
- The determination of Contractor's costs or estimated costs in connection with any change order or contractual modification or proposed change order or contractual modification;
- The Contractor's financial condition; and/or
- Claims by one party against any other.

15.OWNERSHIP AND RETENTION OF RECORDS

All reports, drawings, and other data prepared in connection with the work contemplated by this IFB shall become the property of the County. The Contractor shall retain all records and documents related to work performed under any Contract awarded pursuant to this IFB for at least three (3) years after final Contract payment by the County, and shall make them available for inspection and audit by authorized representatives of the County at all reasonable times.

16.WORKPLACE FREE OF DRUG AND ALCOHOL ABUSE

Contractor shall maintain a workplace free of drug and alcohol abuse during the term of the Contract; shall prohibit employees from working under the influence of drugs or alcohol; and shall refuse to hire or assign to work under the Contract anyone whom the Contractor knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engage in a bona fide drug or alcohol abuse assistance or rehabilitation program.

17. The Contractor certifies that this Agreement has been duly authorized and approved by all required organizational action of the Contractor.

18. The person executing this Agreement on behalf of the Contractor certifies that he or she has the legal and organizational authority to do so.

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Contract Items

This section is not applicable and is intentionally left blank. Please reference the Contract clauses and/or attachments for more information.

Authorization

| | |
|-----------------------------|-----|
| Piggyback Contract | Yes |
| Cooperative Contract | No |

Organization

Anne Arundel County
Administrative Hearings
Aging and Disabilities
Board of Appeals
Board of Elections
Board of License
Commissioners
Budget Office
Circuit Court
County Council
County Executive
Department of Health
Department of Public
Works
Detention Facilities
Emergency Management
Ethics Commission
Facility Management
Finance
Inspections and Permits
Fire Department
IT PQL Request
Office of Central Services
Office of Information
Technology
Office of Law
Office of Personnel
Office of Planning and
Zoning
Office of the County
Auditor
Office of the States
Attorney
Partnership for CYF
Police Department

Recreation and Parks
Risk Management
Division
Sheriff Office
Social Services
Transportation
A&E Request
Capital Construction
Request
Test

Signatures

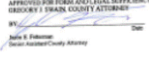
Contractor Signatory

DocuSigned by:

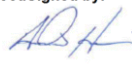
AB6A360D362D4B2...

Jeff Barber

Anne Arundel County, Maryland

DocuSigned by:

0488FCBA9123484...

Jason E. Fetterman

DocuSigned by:

591309B6558244E...

Andrew Hime
Purchasing Agent

CONTRACT

THIS CONTRACT, set forth in triplicate, is made this 29th day of March, 2019 by and between The Maryland-National Capital Park and Planning Commission, a public body corporate and agency of the State of Maryland, hereinafter called the "Commission", and Playground Specialists, Inc., located at 29 Apples Church Road, Thurmont, Maryland, 21788, a Maryland Corporation, hereinafter called the "Contractor".

WHEREAS, the Commission has a need for playground equipment, safety surfacing and playground installation services and associated work on an as-needed basis and Contractor is qualified to perform that service; and

WHEREAS, Contractor entered into a contract for playground equipment, safety surfacing and playground installation services and associated work with Houston-Galveston Area Council ("H-GAC") Contract Number PR11-18, based upon Contractor's response to a competitive solicitation; and

WHEREAS, the H-GAC is a cooperative purchasing program and the Contractor has agreed to extend the terms and conditions of its contract with the H-GAC to the Commission, pursuant to Section 13-516 of the Commission Purchasing Manual, to contract with the Commission for playground equipment, safety surfacing and playground installation and associated work at various sites; and

WHEREAS, the Commission and Contractor are desirous of entering into a contract for the provision of playground equipment, safety surfacing and playground installation services, riding the H-GAC Contract Number PR11-18; and

NOW THEREFORE, WITNESSETH, in consideration of the mutual promises, covenants, and agreements herein contained and other good and valuable consideration it is hereby agreed as follows:

- 1. Scope of Services.** The general scope of services to be performed by Contractor is set forth in the Bid Invitation, incorporated herein by reference. Specifically, the Commission will request a proposal from Contractor for playground equipment, safety surfacing and playground installation services and associated work on an as needed basis. Contractor shall submit a proposal using the rates identified in its response to the above referenced solicitation, which are provided in the H-GAC Contract, attached hereto and incorporated herein as Attachment A. Once the Commission approves Contractor's proposal, the Central Purchasing Division will issue a Task Order (Purchase Order) authorizing the specific services/items prior to Contractor commencing work on any project. These services will be performed in accordance with the terms and conditions of this contract as well as the terms and conditions in the H-GAC Bid Invitation Number PR11-18, and the accepted proposal and issued Task Order. The Task Order proposal will identify the number of hours and equipment estimated to complete the designated services.

2. Performance. Contractor shall perform the playground equipment, safety surfacing and playground installations services and associated work in accordance with the terms and conditions of the H-GAC Contract. However, to the extent that applicable Maryland law requires Contractor to adhere to different or higher standards, Contractor shall adhere to those different and higher standards. Contractor shall comply, in all respects, with the laws and regulations of the State of Maryland as such relate to the subject matter of, the provision of services under, and the performance of this Contract.

3. Amendments to the Houston-Galveston Area Council Contract. In addition to the terms and conditions specified in this Contract, the H-GAC is amended as follows:

- A. The term "Commission" shall be substituted for the terms of "H-GAC".
- B. Contractor is the only firm selected for this task order contract.
- C. Contractor shall have and maintain current valid Maryland Licenses throughout the term of the Contract.
- D. Contractor agrees to provide the policies with the limits as stated in the Commission's Insurance Checklist.
- E. The Commission is tax exempt from Maryland and District of Columbia sales/use tax, and Federal Excise tax.
- F. Disputes between the parties shall be decided in accordance with the Commission's Purchasing Manual.
- G. Task Orders will be issued on an as-needed basis based on requirements of the scope of work for specific projects.

4. Priority of Documents. The following documents are incorporated by reference into and made a part of this Contract. In the event of a conflict among the documents comprising this Contract, the order of priority for purposed of resolving conflicts is:

- A. This Contract and all change orders or amendments issued by the Commission subsequent to the award and execution of this Contract;
- B. The Commission's Task Order Fee Proposal Request.
- C. Contractor's proposal in response to the Commission's Task Order Fee Proposal Request.
- D. H-GAC Contract No. PR-18 and modifications of Contract.
- E. Contractor's proposal response to the Bid Invitation No. PR11-18.

5. Compensation. The Commission's policy is to pay the Contractor within Thirty (30) calendar days after receipt by the Commission of a proper invoice and acceptance of the invoice by the Commission. As Contractor completes the services or supplies the items, the Commission will pay the invoices based upon percentage of completed work authorized by the issued Task Order (Purchase Order) . Contractor shall send an itemized invoice to the contact identified on the Task Order, as well as to the Commission's Accounts Payable Section, 6611 Kenilworth Avenue, Riverdale, Maryland 20737.

6. Term. The term of this Contract is from the date of the last signature of this Contract and expires on October 31, 2020, in accordance with the H-GAC Contract, Article 6, plus any time required for completion of any Task Order issued prior to the expiration date. Contractor rates will be as adjusted by H-GAC until expiration of Contract PR11-18. Thereafter, Contractor rates will (increased or decreased) based upon the change in the U. S. Labor Department Cost Index for all Urban Consumers (CPI- U) for the 12 months immediately preceding the renewal. The right to extend this contract survives the expiration date of this contract.

7. Contract Administration. The Commission's Executive Director, or his/her designee, shall serve as the Contract Administrator. Contractor acknowledges that this is a Commission-Wide Contract, for which any Commission unit/program may request a Task Order in order to utilize Contractor services.

8. Non-discrimination. The Contractor shall comply with the Federal, State and local nondiscrimination in employment laws and regulations. The Contractor shall post in a conspicuous place, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination in employment clause. The Contractor shall not discriminate against any person because of race, creed, sex, age, color, national origin or disability. If the Contractor is determined to be in violation of Federal, state, or local nondiscrimination laws by an order, opinion or a decision of a court or an administrative body or agency, the Commission may terminate or suspend this Contract in whole or in part, and the Commission may declare the Contractor ineligible for any future contracts with the Commission.

9. Insurance. The Contractor shall maintain, at its own expense, during the life of the Contract, insurance for the types of coverage and limits required in the Insurance Check List. The Contractor shall also provide the Commission with a certificate of insurance for the types of coverage and limits required in the Insurance Check List. The Contractor shall furnish a Certificate of Insurance verifying the existence of any insurance coverage required by the Commission's risk management office. The Certificate will name the Commission as an additional insured and will provide for thirty (30) days advance notice in the event of termination or cancellation of coverage.

10. Indemnification. The Contractor shall indemnify, defend and hold harmless the Commission, its officers, employees, agents and representatives, and shall require that each subcontractor indemnify and hold harmless, the Commission, its officers, employees, agents and representatives from and against all actions, liability, claims, suits, damages, cost or expenses of any kind which are made against or incurred by the Commission arising from the Contractor's or any subcontractor's negligent performance of or failure to perform any of its obligations under the terms of this Contract.

The Contractor's foregoing indemnification obligations shall not be reduced as a result of any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor under worker's compensation acts, disability benefit acts or other employee benefits acts.

11. Termination. The Commission may terminate this Contract: (a) for convenience, (b) for default, (c) for lack of appropriation, and (d) by mutual consent.

(a) For Convenience. This Contract may be terminated by the Commission without cause, upon thirty (30) days written notice. Immediately after receiving such a notice the Contractor shall stop all the activities associated with the Contract, except work required to secure the completed work, protect it from damage or deterioration and delivering the same to the authorized representative of the Commission. In the event of termination, the Contractor shall receive compensation for services rendered in accordance with the Contract prior to the effective date of such termination. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.

(b) For Cause/Default. Notwithstanding any provision in this Contract, the Commission may immediately terminate this Contract for cause for the following reasons: any non-performance, breach of a representation, covenant, or warranty, incomplete service, fraud, any fraudulent

representation in any invoice or verification required to obtain payment under this Contract, services performed in conflict with the terms and conditions of this Contract or an unfavorable report resulting from a state or federal background investigation. The occurrence of any of these conditions shall constitute a material breach of this Contract and the Commission may terminate this Contract with written notice to the Contractor effective immediately.

(c) For Lack of Appropriation. If the County Council fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the Commission's rights or the Consultant's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the Commission from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The Commission shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

(d) By Mutual consent.

12. Compliance. The Contractor agrees that it shall comply with the Commission Purchasing Manual, Practices, Rules and all other Commission regulations and with all applicable laws pertaining to the payment and withholding of wages, worker's compensation, equal opportunity employment, and the subject matter and performance of this Contract. Further, the Contractor hereby represents and warrants that:

- a. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified.
- b. It is not in arrears with the respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the terms of this Contract.
- c. It shall comply with all federal, state, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- d. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.
- e. It has the necessary special expertise and experience to complete the work under this Contract.
- f. It shall provide the Commission any requested certification on the release of the Commission for claims and demands for delays, additional costs, and/or disruptions in the event of any mutually agreed change orders arising under this Contract.

13. Disputes. This Contract shall be subject to the provisions of the Commission's Practice 4-10 and the Purchasing Manual. These documents can be obtained by contacting the Commission's Purchasing Division. If there is a dispute concerning this Contract, Contractor shall comply with Chapter 14 of the Commission's Purchasing Manual, which is the procedure for resolving contract disputes and claims between the parties. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Purchasing Manual.

14. Assignment Prohibition. The Contractor shall be prohibited from assigning or transferring any rights under this Contract without the prior written consent of the Commission.
Control No.

15. Entire Agreement. This document contains the entire agreement between the parties and shall not be modified except by written agreement signed by the parties and attached hereto.

16. Severability. If any provision of this Contract is determined to be invalid or illegal by a court of law, it shall be severed from this Contract and shall not affect the remainder of any other provision contained herein.

17. Applicable Law. This Contract shall be interpreted in accordance with the laws of the State of Maryland, and enforced in any court of competent jurisdiction in Prince George's County, Maryland.

18. Waiver. The failure of the Commission to enforce any part of this Contract shall not be deemed as a waiver thereof.

19. Authorized Signer. Each person executing this Contract, whether on its own or behalf of any organization hereby certifies that they have been duly authorized to execute this Contract on behalf of such organization.

20. Cross Default. Upon the occurrence of a material breach of Contractor's obligations, due performance, representations, warranties, or other agreements under this Contract, then the Commission shall be entitled to exercise, in its sole and absolute discretion, any and all rights and remedies available under this Contract and any other contract the Contractor has with the Commission, including, but not limited to the right to terminate this Contract and/or any other contract the Contractor has with the Commission, whether now existing or arising in the future. Contractor expressly understands and acknowledges the Commission's rights and remedies created by this provision.

21. Independent Contractor. Contractor is an independent Contractor and is not an agent or employee of the Commission.

SIGNATURE PAGE TO FOLLOW

Control No. 390404000

IN WITNESS WHEREOF said Contractor and the Commission have caused this Contract to be executed on the day and year first written above.

ATTEST:
Kelsey R
Date: 2-7-19

PLAYGROUND SPECIALISTS, INC
By: [Signature]
(Signature)
52-2132887
Federal Tax Identification/SSN



ATTEST:
[Signature]
Joseph C. Zimmerman
Secretary-Treasurer
Date: 2-1-19

THE MARYLAND-NATIONAL
CAPITAL PARK AND PLANNING
COMMISSION
By: [Signature]
Anju Bennett
Acting Executive Director
Date: 3/29/19

Attachment A
Playground Specialists, Inc.
Parks & Recreation Equipment
Contract No.: PR11-18

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

| HGAC Product Code | Manufacturer | Description | Discount |
|--------------------------|-------------------------------------|---|-----------------|
| PR12 | Classic Recreation Systems, Inc. | 2018 Classic Recreation Systems Shade and Shelter Equipment Catalog | 6.00% |
| PR36 | MyTCoat | 2018 MyTCoat Site Furnishings Catalog | 6.00% |
| PR40 | Paris Equipment Manufacturing Ltd. | 2018 Paris Site Furnishing and Outdoor Exercise Equipment Catalog | 6.00% |
| PR48 | Playworld (Playworld Systems, Inc.) | 2018 Playworld Systems Park & Playground Solutions Catalog | 10.00% |
| PR66 | Themed Concepts | 2018 Themed Concepts Playground Equipment Catalog | 6.00% |



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/08/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | | | |
|--|--|---|--|
| PRODUCER Insurance Brokers of Maryland P.O. Box 1320 Emmitsburg MD 21727 | | CONTACT NAME: Jayme Koontz PHONE (A/C, No, Ext): (301)447-2565 FAX (A/C, No): (301)447-2567 E-MAIL ADDRESS: jayme.koontz@ibmofmd.com | |
| | | INSURER(S) AFFORDING COVERAGE | |
| | | INSURER A: Cincinnati Spec. Underwriters | |
| | | INSURER B: Builders Mutual Ins. Co. 10844 | |
| | | INSURER C: Cincinnati Insurance 10677 | |
| | | INSURER D: | |
| | | INSURER E: | |
| | | INSURER F: | |
| INSURED Playground Specialists, Inc. 29 Apples Church Road Thurmont MD 21788 | | | |

COVERAGES **CERTIFICATE NUMBER:** 18/19 Master **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|---|-----------|----------|---------------|-------------------------|-------------------------|--|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: | | | CSU0096052 | 03/10/2018 | 03/10/2019 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$ |
| B | AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY | | | CAP0017340 08 | 03/10/2018 | 03/10/2019 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ |
| C | UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0 | | | EXS0015535 | 03/10/2018 | 03/10/2019 | EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$ |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | Y/N | | WCP1000169 | 03/10/2018 | 03/10/2019 | PER STATUTE <input checked="" type="checkbox"/> OTH-ER E.L EACH ACCIDENT \$ 1,000,000 E.L DISEASE - EA EMPLOYEE \$ 1,000,000 E.L DISEASE - POLICY LIMIT \$ 1,000,000 |
| C | Leased/ Rented Equipment | | | ENP0122084 | 03/10/2018 | 03/10/2019 | \$25,000 Blanket |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Maryland National Capital Park and Planning Commission is considered to be an additional insured under General Liability if required by contract per the attached CSIA405 08/09.

CERTIFICATE HOLDER**CANCELLATION**

| | |
|--|--|
| Maryland National Capital Park & Planning Commission 6611 Kenilworth Avenue Riverdale MD 20737 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. |
| | AUTHORIZED REPRESENTATIVE |

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