



**GARLAND**  
**PROCUREMENT**

**CITY OF GARLAND, TEXAS**

**STANDARD TERMS AND CONDITIONS GOODS & SERVICES**

- (1) **ENTIRE AGREEMENT:** The standard terms and conditions, specifications, drawings, and other requirements included in the City of Garland's Request for Bid/Proposal (RFx) apply to contracts and purchase orders issued by the City of Garland ("City" or "Buyer") to the Seller ("Bidder," "Contractor," "Consultant," and "Supplier," collectively, "Parties"). The terms and conditions stated herein, along with the RFx, the Purchase Order ("PO," if any), Exhibit B - the Federal Terms Addendum (applicable only for grant-funded purchases), and any response to the City's RFx that is ultimately accepted (collectively referred to as this "Agreement"), are intended to be read and interpreted collectively as the complete and exclusive record of the agreement between the Parties.
- (2) **ORDER OF PRECEDENCE:** In the event of an express conflict between these Standard Terms and Conditions, the RFx (if any), the Federal Terms Addendum (if applicable), the Purchase Order, and the Response to the RFx (or quote/invoice/proposal), the order of precedence is as follows: (i) the Federal Terms Addendum (applicable only for grant-funded purchases), (ii) the RFx (if any), (iii) the Purchase Order, (iv) these Standard Terms and Conditions, and (v) the Response to the RFx, proposal, quote, or invoice. Neither party may modify or add to these terms and conditions unless such changes are expressly agreed upon in writing and executed by both parties. Any deviations must be in writing and signed by an authorized representative of both the City and the Supplier. All terms and conditions contained in the Bidder's bid/proposal, quote, invoice, statement of acceptance, or any other applicable document are hereby expressly rejected.
- (3) **ADDITIONAL TERMS:** No browse-wrap, shrink-wrap, click-wrap, or other non-negotiated terms and conditions not expressly identified in this Agreement will constitute a part or an amendment of this Agreement and will have no force and effect and are deemed rejected by the Customer, even if access to or use of such service or data requires affirmative acceptance of such additional terms or conditions.
- (4) **PARAGRAPH HEADINGS & CONSTRUCTION:** The paragraph headings contained in this Agreement are for convenience only and shall not enlarge or limit the scope or meaning of the various and several paragraphs hereof. The parties acknowledge that they have read and participated in the preparation of

this Agreement so that this Agreement shall not be construed either more or less strongly in favor of or against either party.

- (5) **OFFICIAL BID NOTIFICATION:** The City utilizes the following for official notifications of bid opportunities: <http://garlandtx.ionwave.net> and the Commercial Daily Record of Dallas County. These are the only forms of notification authorized by the City. The City is not responsible for receipt of notifications or information from any source other than those listed. It shall be Bidder's responsibility to verify the validity of all bid information received from any source other than the City. There will be no cost to the Bidder for using Ion Wave for its bids/proposals.
- (6) **FRAUD POLICY:** The City is committed to preventing fraud, waste, abuse and unethical conduct. Bidders should become familiar with the City's fraud policy located on our website <https://www.garlandtx.gov/819/Fraud-Reporting>. Bidders have a responsibility to report any known or suspected fraudulent activities, or unethical conduct, by utilizing one of the following contact mediums: 1). Calling the city's Fraud Hotline at 972-205-2739; 2). Write to the city's Fraud Hotline P.O. Box 469002 Garland TX 75046; 3). Contact the city's Fraud Hotline via email at [FraudHotline@garlandtx.gov](mailto:FraudHotline@garlandtx.gov); 4). Submit a form online to the city's Fraud Hotline: <https://www.garlandtx.gov/FormCenter/Internal-Audit-6/Fraud-Hotline-Form-51>. For more information please visit the city's Fraud Hotline FAQ page here: <https://www.garlandtx.gov/FAQ.aspx?TID=77>.
- (7) **INTERLOCAL AGREEMENT:** Successful Bidder agrees to extend prices to all entities that have entered into or will enter into joint purchasing interlocal cooperation agreements with the City. The City is a participating member of several interlocal cooperative purchasing agreements. As such, the City has executed intelocal agreements, as permitted under Chapter 791 of the Local Government Code, with certain other political subdivisions, authorizing participation in a cooperative purchasing program. The successful supplier may be asked to provide products/services based upon the bid price, to any other participant.
- (8) **RIGHT TO AUDIT:** The City shall have the right to examine and audit after reasonable notice any and all books and records of Bidder that may relate to this Agreement, including, without limitation, the performance of the selected Bidder, its employees, agents, and subcontractors. All applicable books and records will be maintained in accordance with generally accepted accounting principles (GAAP) and shall, upon request and at the City's request, be made available at a location designated by the City. The selected Bidder shall, except for copying costs, otherwise bear all costs of producing such records for examination and copying by the City. Unless otherwise agreed by the Parties, such records must be made available to the City within five business days. The provisions of this paragraph shall survive the termination of this Agreement.
- (9) **AMENDMENT AND WAIVER:** This Agreement may be amended, supplemented, or otherwise modified only by means of a written instrument

signed by both Parties. The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other Party.

- (10) **RISK OF LOSS:** Until the time of the delivery and acceptance of the Bill of Sale for the purchase and sale of goods, if any, the risk of loss or damage to any of the goods, by fire or other casualty, shall be borne by the selected Bidder.
- (11) **SEVERABILITY:** Should any provision of this Agreement be unenforceable or invalid, the other provisions hereof shall remain in full force and effect.
- (12) **CORRESPONDENCE:** The bid number must appear on all correspondence and inquiries pertaining to the RFX. The purchase order number must appear on all invoices or other correspondence relating to the Agreement.
- (13) **INDEMNIFICATION: THE BIDDER AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF GARLAND, ITS OFFICERS, AGENTS AND EMPLOYEES, BOTH PAST AND PRESENT, FROM AND AGAINST LIABILITY FOR ANY AND ALL CLAIMS, LIENS, SUITS, DEMANDS, AND ACTIONS FOR DAMAGES, INJURIES TO PERSONS (INCLUDING DEATH), PROPERTY DAMAGE (INCLUDING LOSS OF USE), AND EXPENSES, (INCLUDING COURT COSTS, ATTORNEYS' FEES AND OTHER REASONABLE COSTS OF LITIGATION) ARISING OUT OF OR RESULTING FROM BIDDER'S WORK AND ACTIVITIES CONDUCTED IN CONNECTION WITH OR INCIDENTAL TO THIS CONTRACT AND FROM ANY LIABILITY ARISING OUT OF OR RESULTING FROM INTENTIONAL ACTS OR NEGLIGENCE OF THE BIDDER, INCLUDING ALL SUCH CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL, OR STATUTORY LAW, OR BASED IN WHOLE OR IN PART UPON THE NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF BIDDER, INCLUDING BUT NOT LIMITED TO ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES, AND OTHER PERSONS. THE BIDDER FURTHER AGREES THAT IT SHALL AT ALL TIMES EXERCISE REASONABLE PRECAUTIONS ON BEHALF OF, AND BE SOLELY RESPONSIBLE FOR, THE SAFETY OF ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES AND OTHER PERSONS, AS WELL AS THEIR PROPERTY, WHILE IN THE VICINITY WHERE THE WORK IS BEING DONE. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT CITY SHALL NOT BE LIABLE OR RESPONSIBLE FOR THE NEGLIGENCE OR OTHER FAULT OF THE BIDDER, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES, OR OTHER PERSON ASSOCIATED WITH THE BIDDER. THE BIDDER AGREES TO INDEMNIFY AND SAVE THE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKERS, MECHANICS, MATERIALMEN, AND FURNISHERS OF SUPPLIES, EQUIPMENT, FINANCING, OR ANY OTHER GOODS OR**

**SERVICES, TANGIBLE OR INTANGIBLE. WHEN THE CITY SO DESIRES, THE BIDDER SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID DISCHARGED OR WAIVED.**

- (14) **THIRD PARTY INDEMNIFICATIONS:** Notwithstanding anything to the contrary, the parties expressly acknowledge that the City's authority to Indemnify and hold harmless any third party is governed by Article XI, Section 7 of the Texas Constitution, and any provision that purports to require indemnification in contravention to this State provision by the City is invalid.
- (15) **CONFIDENTIALITY:** In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
- (16) **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
- (17) **DELIVERY:** All goods shall be delivered free on board (F.O.B) destination unless otherwise authorized herein. Cash on delivery (C.O.D.) shipments or deliveries are not permitted.
- (18) **SPECIFICATIONS SAMPLES:** If bidding on other than the item requested, the bid must identify the trade name, manufacturer's name and/or catalog number, and certify the item offered is equivalent. Descriptive literature must be

submitted with alternate brands. Samples shall be furnished free of expense to the City and if requested, may be returned at Bidder's expense.

- (19) **TIE BIDS:** In the event of tie bids, preference will be given to the Bidder who offers the best value to the City in accordance with state law.
- (20) **ERROR QUANTITY:** Bids must be submitted in units of quantity specified, extended, and totaled. In the event of discrepancies in extension, the unit prices shall govern.
- (21) **ACCEPTANCE:** The right is reserved to accept or reject all or part of the bid, and to accept the offer considered most advantageous to the City by line item or total bid.
- (22) **OEM PARTS:** All vehicle options are to be OEM factory installed unless otherwise identified on this bid.
- (23) **SUBSTITUTION:** Every delivery of goods by the selected Bidder must comply with all provisions of this Agreement including the specifications, delivery schedule, quantity and quality. Any delivery which does not conform to the requirements of the Agreement shall constitute a breach of contract. The successful Bidder does not have authorization to make a substitute unless it is agreed to by the City.
- (24) **BID LIST REMOVAL:** The City reserves the right to remove a supplier from any bid list for:
  - A) continued failure to be responsive to the City,
  - B) failure to deliver merchandise within promised time,
  - C) delivery of substandard merchandise or
  - D) failure to comply with the requirements of the Agreement.
- (25) **DELIVERY TIMES:** Deliveries to the City Warehouse or other designated City Buildings or Facilities will be accepted during normal working hours, i.e. 8:00 a.m. to 4:00 p.m., Monday through Friday unless other arrangements have been made. Deliveries being made directly to City work sites should be coordinated with the City employee responsible for the work being performed at that site.
- (26) **PACKAGING:** Unless otherwise indicated, items will be new, not rebuilt, in first class condition, and in containers suitable for damage-free shipment.
- (27) **WARRANTY:** By accepting this Agreement, the selected Bidder warrants that the goods and services to be furnished will be free from defects in materials and workmanship, be of merchantable quality and fit for ordinary use, be in full conformance with City's specifications, drawings and data, Seller's samples or models, and express warranties, and to be fit for any City's particular purpose expressly or impliedly known. These warranties are in addition to all others given to the City by the Seller or by law. Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the City, and any such limitations or exclusions are void.
- (28) **TERM CONTRACTS:** Except as otherwise provided herein, prices must remain firm for the entire contract period, including any periods of extension or renewal. At the time of any renewal or extension of the contract, the city or the selected

Bidder may request a price adjustment based upon the economy. All requests for a price adjustment must include detailed documentation and rationale to support the requested adjustment. The party to whom a request for price adjustment is made may, in its sole discretion, accept or reject the request. Any price adjustment must be mutually agreed upon in writing by the Parties, and shall be effective for the applicable renewal term.

- (29) **TERM CONTRACT QUANTITIES:** The quantities in the request for bid are estimated requirements and the City reserves the right to increase or decrease the quantities or cancel any item to be furnished. The successful bidder shall have no claim against the City for anticipated profits for quantities diminished or deleted.
- (30) **TERM CONTRACT SHIPMENTS:** The selected Bidder will make shipments under this Agreement only when requested and only in the quantities requested. If there are minimum shipments or standard packaging requirements, please note the items affected.
- (31) **CONTRACT RENEWAL OPTIONS:** In the event a clause for option to renew for an additional period is included in the RFX, all renewals will be based solely upon the option and agreement between the City and the selected Bidder. Either party dissenting will terminate the Agreement in accordance with its initial specified term.
- (32) **TAXES-EXEMPTION:** All quotations are required to be submitted LESS Federal Excise and State Sales Taxes. A tax exemption certificate will be executed for the selected Bidder.
- (33) **ASSIGNMENT:** Selected Bidder shall not assign this order or any interest herein, including any performance or any amount which may be due or become due hereunder, without City's prior written consent.
- (34) **INVOICING:** Send ORIGINAL INVOICE to address indicated on the purchase order, or email it to [contracts@garlandtx.gov](mailto:contracts@garlandtx.gov). If invoice is subject to cash discounts the discount period will begin on the day invoices are received. So that proper cash discount may be computed, invoice should show amount of freight as a separate item, if applicable; otherwise, cash discount will be computed on total amount of invoice.
- (35) **INSPECTION:** Goods purchased are subject to inspection and approval by City. City reserves the right to reject or refuse acceptance of goods which are not in accordance with City's instructions, specifications, drawings and data, or the selected Bidder's warranties (expressed or implied). Goods not accepted will be returned to selected Bidder at selected Bidder's risk and expense. Payment for any goods shall not be deemed an acceptance thereof.
- (36) **ELECTRONIC SIGNATURE:** The City adopts the TEXAS BUSINESS & COMMERCE CODE CHAPTER 43. UNIFORM ELECTRONIC TRANSACTION ACT, allowing individuals, companies, and governmental entities to lawfully use and rely on electronic signatures.

- (37) **FUNDING OUT CLAUSE:** This Agreement may be terminated by the City with written notice and without penalty or liability in the event that one of the following hold true:
- A) the City lacks sufficient funds for this Agreement;
  - B) funds for this Agreement are not appropriated by the City Council of the City; and
  - C) funds for this Agreement that are or were to be provided by grant or through an outside service are withheld, denied or are otherwise not available to the City.
- (38) **DISPUTE RESOLUTION:** Pursuant to subchapter I, Chapter 271, TEXAS LOCAL GOVERNMENT CODE, the selected Bidder agrees that, prior to instituting any lawsuit or other proceeding arising from any dispute or claim of breach under this Agreement (a "Claim"), the Parties will first attempt to resolve the claim by taking the following steps:
- A) A written notice substantially describing the factual and legal basis of the claim shall be delivered by the selected Bidder to the City within one-hundred eighty (180) days after the date of the event giving rise to the claim, which notice shall request a written response to be delivered to the selected Bidder not less than fourteen (14) business days after receipt of the notice of claim;
  - B) if the response does not resolve the claim, in the opinion of the selected Bidder, the selected Bidder shall give notice to that effect to the City whereupon each party shall appoint a person having authority over the activities of the respective Parties who shall promptly meet, in person, in an effort to resolve the claim;
  - C) if those persons cannot or do not resolve the claim, then the Parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the claim.
- (39) **DISCLOSURE OF CERTAIN RELATIONSHIPS:** Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any supplier or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the supplier or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the Records Administrator of the City of Garland not later than the 7th business day after the date the supplier or person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor. Chapter 176 and the questionnaire may be found at [www.garlandpurchasing.com](http://www.garlandpurchasing.com). By submitting a response to this request, supplier represents that it is in compliance with the requirements of Chapter 176 of the Texas Local Government Code.

- (40) **PERFORMANCE:** If the selected Bidder fails to comply with any provisions or terms of this Agreement or the bid specifications and/or supplemental terms and conditions, the City may at City's option, cancel this Agreement and any other orders outstanding. In the event of cancellation City retains all rights and remedies it may have under state law.
- (41) **NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.
- (42) **APPLICABLE LAW:** Where applicable, this Agreement shall be governed by the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.
- (43) **VENUE:** This Agreement will be governed and construed according to the laws of the State of Texas. This agreement is performable in Dallas County, Texas.
- (44) **TERMINATION:** The City at any time after issuance of this Agreement, by 10 days written notice, has the absolute right to terminate this Agreement for cause or convenience. Cause shall be the selected Bidder's refusal or failure to satisfactorily perform or complete the work within the time specified, or failure to meet the specifications, quantities, quality and/or other requirements specified in the Agreement. In such case the selected Bidder shall be liable for any damages suffered by the City. If the Agreement is terminated for convenience, the selected Bidder has no further obligation under the Agreement. Payment shall be made to cover the cost of material and work in process or "consigned" to the City as of the effective date of the termination.



(45) **FORCE MAJEURE:** To the extent either party of this Agreement shall be wholly or partially prevented from the performance of the term specified, or of any obligation or duty placed on such party by reason of or through work strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, court judgment, act of God, or other specific cause reasonably beyond the party's control and not attributable to either party's malfeasance, neglect or nonfeasance, the time for performance of such obligation or duty shall be suspended until such disability to perform is removed. The sole remedy for any matter falling within this clause shall be additional time; the total contract price shall not be increased. Neither party shall consider economic events, including but not limited to inflation, as 'force majeure'.

(46) **STATUTORILY MANDATED PROVISIONS:**

A) **Verification Contractor Does Not Boycott Israel.**

Pursuant to Section 2271.002, Texas Government Code, to the extent this Agreement is a contract for goods or services, if Consultant has ten or more full-time employees and this Agreement is for goods and services valued at or above \$100,000 and is to be paid wholly or partially by public funds, then Consultant hereby represents that it does not boycott Israel and will not boycott Israel during the term of this Agreement.

B) **Verification: Contractor Does Not Discriminate Against Firearm and Ammunition Industries.**

Pursuant to Section 2274.002, Texas Government Code, if Consultant has ten or more full-time employees and this Agreement is for goods and services valued at or above \$100,000 and is to be paid wholly or partially by public funds, then Consultant hereby represents that it does not boycott firearm entities or firearm trade associations and will not boycott said firearm entities and trade associations during the term of this Agreement.

C) **Verification: Bidder Does Not Boycott Energy Companies.**

Pursuant to Section 2276.002, Texas Government Code, if Consultant has ten or more full-time employees and this Agreement is for goods and services valued at or above \$100,000 and is to be paid wholly or partially by public funds, then Consultant hereby represents that it does not boycott those energy companies identified in Section 809.001 of the Texas Government Code and will not boycott said energy companies during the term of this Agreement.

D) **Prohibition on Contracts with Certain Companies.**

Bidder and the person or persons executing this Agreement on behalf of bidder, or representing themselves as executing this Agreement on behalf of bidder (collectively, the "Signing Entities"), hereby acknowledge that

1. the Signing Entities do not engage in business with Iran, Sudan or any foreign terrorist organization and
2. the Signing Entities are not named on a list prepared and maintained by the Texas Comptroller of Public Accounts under

Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or  
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>

- E) **Certificate Regarding Foreign Ownership of Companies Involved in Critical Infrastructure Projects.** Pursuant to SB 2116 of the 87th Regular Session of the Tex. Legislature, enacted on June 18, 2021, and any relevant provisions of Texas law, bidder, by executing the Agreement, certifies that it is not owned by nor is the majority of the bidder's stock or other ownership interest held or controlled by the government or citizens of the following countries: China, Iran, North Korea, Russia, and any other country designated by the Governor of Texas as a threat to critical infrastructure under Section 113.003 of the Texas Business & Commerce Code (the "Prohibited Countries"). The term "critical infrastructure" shall have the same meaning as that set forth in Section 113.001(2) of the Texas Business and Commerce Code. Bidder further certifies that it is not owned, held, or controlled by any company or governmental entity controlled by or headquartered in the Prohibited Countries.

The foregoing prohibitions apply regardless of whether the bidder's securities are publicly traded or whether the bidder is listed on a public stock exchange.

- F) **Open Records Contracting Information.** If this Agreement is executed on or after January 1, 2020, and the Agreement is a contract within the scope of Section 552.371, Government Code, then the following shall apply:
1. the requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement and selected Bidder agrees that this Agreement may be terminated if selected Bidder knowingly or intentionally fails to comply with a requirement of that subchapter and without limiting the foregoing, selected bidder agrees to comply with the requirements of Section 552.372, Government Code, including Section 552.372(a)(3)(B), Government Code.

(47) **WORKING DAY OR DAYS:** The following are legal holidays for the City of Garland:

- A) New Year's Day
- B) Martin Luther King, Jr. Day Memorial Day July 4th Labor Day

- C) Thanksgiving (2 days)
- D) Christmas (2 days)
- E) Business Hours: 8:00 a.m. to 5:00 p.m. Monday through Friday.

(48) **QUALIFICATIONS FOR DOING BUSINESS WITH THE CITY:**

- A) For purposes of this policy, “person” includes:
  - (a) an individual;
  - (b) a majority owner or principal of a corporation, partnership, association, or limited liability company;
  - (c) shareholders in a business entity with five or fewer shareholders; and
  - (d) majority owned affiliates of the foregoing.
- B) It is the policy of the City Council that the City not engage in business with a person who has been convicted of any state or federal felony offense. The City shall not, except as provided in this policy, enter into or renew a contract to purchase, sell, or lease goods or services to or from any person who has been:
  - (a) convicted of a state or federal felony; or
  - (b) convicted or fined in excess of \$50,000 on certain state or federal discrimination offenses. A conviction includes a probated sentence, a deferred adjudication, or similar disposition. Discrimination charges include only those brought for discrimination based on race, gender or religion.
- C) This policy does not apply when:
  - (a) At least three years have elapsed between the conviction and the approval of the contract;
  - (b) The contract does not require City Council approval;
  - (c) Anything of value is paid or given to a person as an informant or participant in a crime stopper program; or
  - (d) The City Council determines that application of this policy to a proposed contract would cause financial hardship to the City by its application (in which event the City Council may waive the application of this policy by the affirmative vote of not less than six members of the City Council). For bid applications that may result in a contract award by the City Council, the bidder shall include a certification.

- (49) **DOING BUSINESS WITH DELINQUENT ACCOUNT HOLDERS:** It is the policy of the City Council that the City not do business with a person (including a business entity of any sort) who is delinquent on an account to the City. Examples of delinquent accounts include taxes, impact fees, special assessments, utility bills, and EMS fees. The City Manager shall cause the affected departments within the City (including Purchasing, Engineering, Planning, and GP&L) to be provided with sufficient information to enforce the provisions of this policy.

- (50) **PROHIBITION AGAINST PERSON INTEREST IN CONTRACTS:** No City of Garland employee shall have a direct or indirect financial interest in any contract with the City, or be directly or indirectly financially interested in the sale of land, materials, supplies or services to the City.
- (51) **PREVAILING WAGE RATES:** Contractors are required to comply with Texas Government Code Chapter 2258, Prevailing Wage Rates. For the purposes of work performed pursuant to public works contracts, contractors are required to pay not less than the prevailing wage rates as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments. The City of Garland has adopted the general prevailing rate of per diem wages for Dallas County, Texas as set by the United States Department of Labor Davis and Bacon Wage Determination, which are reported and updated from time-to-time at and at the Wage Determinations [website http://beta.sam.gov/](http://beta.sam.gov/).
- (52) **PROMPT PAYMENT:** The State of Texas Prompt Payment Act, Texas Government Code, Chapter 2251, stipulates that for any contract executed by a municipality, the associated payment is due by the 30th calendar day after the latest of the following: The day the agency received the goods; The day the services were completed by the vendor for the agency; or The day the agency received the invoice for the goods or services. What does this mean? Late payments will automatically have interest calculated and included with the payment. Payments for goods and services must be paid no later than 30 days after the latter of:
- A) the receipt of goods/services or
  - B) receipt of a completed invoice.
- (53) **WASTE MINIMIZATION AND RECYCLING:** The City shall give preference in purchasing to products made of recycled materials if the products meet the applicable specifications.
- (54) **IMMIGRATION AND REFORM ACT:** Bidder declares and affirms that their company is in compliance with the Immigration and Reform Act of 1986 and all employees are legally eligible to work in the United States of America. Bidder further understand and acknowledge that any non-compliance with the Immigration and Reform Act of 1986 at any time during the term of this contract will render the contract voidable by the City of Garland.
- (55) **VENDOR COMPLIANCE, RECIPROCITY ON NON-RESIDENT BIDDERS:** Texas Government Code Section 2252.002 provides that in order for nonresident bidders to be awarded a governmental contract, the Bidder must bid projects for construction, improvements, supplies, or services in Texas at an amount lower than the lowest Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid the nonresident bidder in order to obtain a comparable contract in the nonresident bidder's state. A nonresident bidder is a person, including a contractor, whose principal place of

business or corporate office is outside of the state of Texas. This requirement does not apply to a contract involving Federal funds.

(56) **DEBARRED VENDOR:** Bidder certifies that that they are not a debarred vendor on either the State of Texas Comptroller of Public Accounts “Debarred Vendor List” or the General Services Administration’s System of Award Management “SAM” debarment list. If a successful bidder becomes debarred during the course of this performance or agreement, the City will have the absolute right to exit the agreement or conclude performance without any liability.

(57) **CONSULTING SERVICES:**

A) **Status of Consultant:** Consultant acknowledges that Consultant is an independent contractor of the City and that Consultant is not an employee, agent, official or representative of the City. Consultant shall not represent, either expressly or through implication, that Consultant is an employee, agent, official or representative of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Consultant.

B) **Standard of Care:** Consultant will perform services under this Agreement with the degree of skill and diligence normally practiced by professional consultants performing the same or similar services.

C) **Ownership of Documents:** Upon completion or termination of this Agreement, all documents prepared by the Consultant or furnished to the Consultant by the City shall be delivered to and become the property of the City.

D) **Information Provided by Others:** The City shall provide Consultant, in a timely manner, any information reasonably necessary to perform the services contemplated by this Agreement. Consultant shall be able to rely on the accuracy of the information provided by the City and its representatives unless Consultant knows the information is inaccurate or its inaccuracy should have been apparent.

E) **Records:** Consultant shall maintain records of all work done on behalf of the City.

(58) **PAYMENT & PERFORMANCE BOND REQUIREMENTS:** Sec. 2253.021. (1) & (2) of the Local Government Code states that all public works contract in excess of \$50,000.00 require a Payment Bond and all public works contracts above \$100,000.00 require a Performance Bond.

A) **Bonding Notes:**

1. Payment bonds are required on all contracts in excess of \$50,000.00 involving a contract for construction, alteration or repair of any public building or the completion of any public work.
2. Performance bonds are required on all contracts in excess of \$100,000.00 involving a contract for construction, alteration or repair of any public building or the completion of any public work.

3. Bonds must be payable to the awarding authority, the City of Garland (the Owner), as the named obligee, and must be approved as to form by such awarding authority.
4. These Bonds must be furnished before any work is commenced.
5. Surety must be a corporate surety duly authorized to do business in Texas, and acceptable to the Owner.
6. Each of these Bonds must be in the full amount (100%) of the contract value which they secure.
7. Power of Attorney for Corporate Surety must be attached to each of these Bonds.

**(59) HAZARDOUS OR UNKNOWN SUBSTANCES.**

(A) Definition. For the purposes of this Section, a Hazardous Substance is defined as

(1) any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite, or actinolite, whether friable or non-friable;

(2) any polychlorinated biphenyls (PCBs), or PCB-containing materials or fluids;

(3) radon; any other hazardous, radioactive, toxic, or noxious substance, material, pollutant, or solid, liquid, or gaseous waste;

(4) any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration, or area of release could have a significant effect on human health, the environment, or natural resources;

(5) any substance that, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;

(6) any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Texas Water Code Annotated Section 26.344; and Title 30 of the Texas Administrative Code Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance; and

(7) any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.

(B) Contractor responsibilities.

(1) The CONTRACTOR and its SUBCONTRACTORS are deemed to have made themselves familiar with and at all times shall comply with any and all applicable federal, state or local laws, rules, regulations, ordinances, and rules of common law now in effect (including any amendments now in effect), relating to the environment, Hazardous Substances or exposure to Hazardous Substances, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. §§ 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A. §§ 1201, et seq.; the Clean Water Act, 33 U.S.C. § 1251, et seq., the Toxic Substances Control Act, 15 U.S.C.A. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C.A. §§ 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §§ 3808, et seq., and the latest judicial or administrative interpretation of these laws, rules, regulations, ordinances, or rules of common law, including but not limited to any judicial or administrative order, consent decree, or judgment affecting the Project.

(2) In the event the Contractor discovers or encounters on the site materials reasonably believed to be a Hazardous Substance that have not been rendered harmless, and removal of such materials is not a part of the scope of work required under the contract documents, the Contractor shall immediately stop work in the affected area and report, both verbally and in writing, the facts of such encounter to the City. Work in the affected area shall not thereafter be resumed except by written order of the City unless and until the material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. The City may choose to remediate the Hazardous Substance with a separate Contractor or through a Change Order with the Contractor. If the City determines that the Hazardous Substance exists in the affected area due to the fault or negligence of the Contractor or any of its Subcontractors, the Contractor shall be responsible for remediating the condition at the sole expense of the Contractor in accordance with the Contractor's Spill Prevention and Response Plan. An extension of working time for any delay in the progress schedule caused as a result of the discovery and remediation of a Hazardous Substance may be granted by the City only if all remaining work on the Project must be suspended and the delay cannot be made up elsewhere in the progress schedule. Any claim or request for an extension of working time by the Contractor in connection with the discovery and remediation of a Hazardous Substance is subject to the provisions of this Contract.

(3) The Contractor shall be responsible for identification, abatement, cleanup, control, removal, remediation, and disposal of any Hazardous Substance brought into or upon the site by the Contractor or any Subcontractor or supplier. The Contractor shall obtain all permits necessary for the legal and proper handling, transportation, and disposal of the Hazardous Substance and shall, prior to undertaking any abatement, cleanup, control, removal, remediation, and disposal,

notify the City so that it may observe the activities of Contractor; provided, however, that it shall be the Contractor's sole responsibility to comply with all applicable laws, rules, regulations, or ordinances governing the activities.

(4) The Contractor shall deposit surplus or waste excavation or other materials removed as part of the Work at a legal disposal site in accordance with all applicable state, federal, and local laws, rules, regulations, and ordinances. The Contractor shall submit to the City for review and approval all planned disposal sites or proposed uses for the surplus or waste excavation or other materials prior to removal of any excavation or other material from the Project site. A copy of all transport manifests for surplus or waste excavation or other materials shall be obtained and retained in the Contractor's records for reference purposes, to be provided upon request to the City or any governmental regulatory agency with jurisdiction over the matter.

(C) Spill Prevention Plan. At least seventy-two (72) hours prior to commencing performance of any of the Work at the Project site, the Contractor shall submit to the City for review and approval a Spill Prevention and Response Plan (SPRP) meeting the requirements of federal and state law, rules, and regulations. The SPRP shall be specially designed for the Contractor's planned work methods and procedures. The SPRP shall be designed to complement all applicable safety standards, fire prevention regulations, and pollution prevention policies and procedures. The SPRP shall include estimates of the quantity and rate of flow should equipment fail, and detail containment or diversionary structures to prevent spills from leaving the site or migrating into adjacent properties or navigable waters. The SPRP shall include methods of recovery of spilled materials and all applicable twenty-four (24) hour emergency phone numbers, including without limitation that of the City. The Contractor shall not commence any fieldwork prior to approval of such plan by the City.

(1) If there has been a spill or release at or adjacent to the Project Site, whether associated with this Contract or not, the Contractor shall immediately report the event to the City or other designated representative. Thereafter, within two working days after the occurrence of such event, the Contractor shall submit a written report describing such event in a degree of detail reasonably acceptable to the City. This clause shall be effective as to any spill of foreign chemical substances into any creek, stream, or other body of water, and as to any Hazardous Substance.

(2) The following additional rules shall apply with respect to spills caused by the Contractor or a Subcontractor:

(a) The Contractor shall immediately respond in accordance with the SPRP in the event of a spill.

(b) The Contractor shall dispose of spilled materials in accordance with EPA and Texas Commission on Environmental Quality (TCEQ) regulations and any other applicable federal, state, or local laws, rules, or regulations. In connection



with such disposals, the Contractor shall use only those transporters and disposal facilities for which the City has given its prior written approval. A copy of all transport manifests for the spilled materials shall be obtained and retained in the Contractor's records for reference purposes, to be provided upon request of the City or any governmental regulatory agency with jurisdiction over the matter. All costs of collection, containment, and disposal of spilled materials shall be the sole responsibility of the Contractor.

(c) The term "spill" includes any kind of environmental discharge or release.

(D) Material term. THE TERMS OF THIS SECTION 56 ARE MATERIAL TO THE CONTRACT; VIOLATION OF THESE TERMS MAY RESULT IN TERMINATION FOR CAUSE.

- (60) **Americans with Disabilities Act.** The City of Garland does not discriminate against any qualified disabled person solely by reason of his or her disability, exclude from participation in, deny the benefits of, or other subject individuals to discrimination, including discrimination of employment, under any program or activity that receives or benefits from federal financial assistance. The City ensures that its programs will be conducted, and its facilities operated, in compliance with all nondiscriminatory practices and requirements imposed by or pursuant to 28 CFR Part 35, and 42 USC §§ 12101-122313. All contractors shall abide by the provisions of the ADA with regard to individuals with disabilities.
- (61) **Title VI of the Civil Rights Act.** The City, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

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# GARLAND

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## PROCUREMENT

### EXHIBIT A: CITY OF GARLAND STANDARD INSURANCE REQUIREMENTS

Contractors providing goods, materials and services for the City of Garland (the “City”) shall, during the term of the contract with the City or any renewal or extension thereof, provide and maintain the types and amounts of insurance set forth herein. All certificate(s) of insurance shall contain the following provisions:

1. Name the City, its officers, representatives, and employees as additional insureds as to all applicable coverage as noted.
2. Provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change or modification of any policies, evidenced by return receipt or United States Mail.
3. Provide for a waiver of subrogation in favor of the City.

Insurance Company Qualification: All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least “A- VII” by A.M. Best’s Key Rating Guide, or other equivalent rating service(s).

Certificate of Insurance: A certificate of insurance evidencing the required insurance shall be submitted with the Contractor’s bid or response to proposal. A certificate of insurance shall also be provided to the City prior to the date the contract is executed, renewed or extended.

Insurance Types and Limits: Standard Insurance Terms under “All Contracts” apply unless a more specific Contract type is applicable and modifies the insurance limits.

Type of Contract

Type and amount of Insurance

All Contracts

General Liability for bodily injury, property damage, and advertising injury with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 aggregate, including a separate aggregate of \$2,000,000 for products and completed operations.

Automobile Liability with a minimum limit of \$500,000 per occurrence or combined single limit.

Texas Statutory Workers’ Compensation

and Employers Liability with a minimum limit of \$100,000 for Each Accident, Disease – Each Employee and Disease – Policy Limit. Non-Subscribers must provide proof their non-subscriber status with the Texas Department of Insurance (Form – DWC 005)

Special Events

If the contractor serves, sales or otherwise provides alcoholic beverages, Liquor Liability with a minimum of \$1,000,000 per Occurrence and \$2,000,000 Aggregate.

If the City, in its sole determination, considers activities of the Special Event to be high risk or dangerous activities, Umbrella Coverage or Excess Liability Excess Coverage commensurate with the risk, but in no event less than \$2,000,000.

If a transportation hire for service is provided, Automobile Liability with a minimum of \$1,000,000 combined single limit.

Public Works and Construction

Texas Statutory Workers' Compensation and Employers Liability with a minimum limit of \$1,000,000 for Each Accident, Disease – Each Employee and Disease – Policy Limit. Non-Subscribers must provide proof their non-subscriber status with the Texas Department of Insurance (Form – DWC 005)

Professional Services

Professional Liability Insurance with a minimum of \$1,000,000 per occurrence and \$2,000,000 aggregate. Must be on an Occurrence Form. If coverage is provided on a Claims-Made Form, then it must have a retroactive date at least to the first date of the applicable contract for which coverage is provided.

Software, SAAS and IT Services

Errors & Omissions \$1,000,000  
Cyber Liability \$1,000,000  
Privacy & Network Security \$1,000,000

The above limits are standard. The City of Garland's Risk Management Department reserves the right to amend these limits and coverages based on the exposures in the subject contract.

Certificate Holder Address:

City of Garland

Attn: Procurement Department  
200 N. Fifth Street

Garland, TX 75040

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# GARLAND

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## PROCUREMENT

### **EXHIBIT B: COG FEDERAL TERMS & CONDITIONS ADDENDUM**

#### **1). DEBARMENT / SUSPENSION CERTIFICATION**

This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by the City of Garland. If it is later determined that the contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, then, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The Contractor agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### **2). VENDOR VIOLATION OR BREACH OF CONTRACT TERMS**

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 USC 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Provisions regarding Vendor default are included in the City of Garland Standard Terms and Conditions. Any Contract award will be subject to such Standard Terms and Conditions, as well as any additional terms and conditions in any Purchase Order, or Construction Contract. The remedies under the Contract are in addition to any other remedies that may be available under law or in equity. By submitting a Proposal, you agree to these Vendor violation and breach of contract terms.

#### **3). TERMINATION FOR CAUSE OR CONVENIENCE:**

For any City of Garland purchase or contract in excess of \$10,000 made using federal funds, you agree that the following term and condition shall apply:

The City of Garland may terminate or cancel any Purchase Order under this Contract at any time, with or without cause, by providing seven (7) business days advance written notice to the Vendor. If this Agreement is terminated in accordance with this Paragraph, the City of Garland shall only be required to pay Vendor for goods or services delivered to the City prior to the termination and not otherwise returned in accordance with Vendor's return policy. If the City has paid Vendor for goods or services not yet provided as of the date of termination, Vendor shall immediately refund such payment(s).

If an alternate provision for termination of a City purchase for cause and convenience, including the manner by which it will be effected and the basis for settlement, is included in the City's Purchase Order or Construction Contract, or ancillary agreement agreed to by the Vendor, the City's provision shall control.

#### **4). EQUAL EMPLOYMENT OPPORTUNITY**

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

The equal opportunity clause provided under 41 CFR 60-1.4(b) is hereby incorporated by reference. Vendor agrees that such provision applies to any City of Garland purchase or contract that meets the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 and Vendor agrees that it shall comply with such provision.

#### **5). DAVIS-BACON ACT**

When required by Federal program legislation, Vendor agrees that, for all City of Garland prime construction contracts/purchases in excess of \$2,000, Vendor shall comply with the Davis-Bacon Act (40 USC 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, Vendor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determinate made by the Secretary of Labor. In addition, Vendor shall pay wages not less than once a week.

Current prevailing wage determinations issued by the Department of Labor are available at [beta.sam.gov](http://beta.sam.gov). Vendor agrees that, for any purchase to which this requirement applies, the award of the purchase to the Vendor is conditioned upon Vendor's acceptance of the wage determination.

Vendor further agrees that it shall also comply with the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

## **6). CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

Where applicable, for all City of Garland or purchases in excess of \$100,000 that involve the employment of mechanics or laborers, Vendor agrees to comply with 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 USC 3702 of the Act, Vendor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

The requirements of 40 USC 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

## **7). RIGHT TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

If the City of Garland's Federal award meets the definition of "funding agreement" under 37 CFR 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance or experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. Vendor agrees to comply with the above requirements when applicable.

## **8). CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act (33 USC 1251-1387), as amended – Contracts and subgrants of amounts in excess of \$150,000 must contain a provision

that requires the non-Federal award to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

When required, Vendor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act.

## **9). BYRD ANTI-LOBBYING AMENDMENT**

Byrd Anti-Lobbying Amendment (31 USC 1352) - Vendors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. As applicable, Vendor agrees to file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 USC 1352).

## **10). PROCUREMENT OF RECOVERED MATERIALS**

For City of Garland purchases utilizing Federal funds, Vendor agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act where applicable and provide such information and certifications as the City of Garland may require to confirm estimates and otherwise comply. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery, and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## **11). DOMESTIC PREFERENCES FOR PROCUREMENTS**

Where appropriate and consistent with law, 2 CFR §200.322 contains certain considerations for domestic preferences for procurements which may be applicable to the City of Garland when using federal funds. When required by the City, Vendor agrees to provide such information or certification as may reasonably be requested regarding Vendor's products, including whether goods, products, or materials are produced in the United States.



## **12). PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

2 CFR §200.216 prohibits expending federal loan or grant funds to procure or obtain certain telecommunications and video surveillance services or equipment. To the extent applicable and when required by the City of Garland, Vendor agrees to provide such information or certification as may reasonably be requested by the City to confirm whether any telecommunications or video surveillance services or equipment provided by Vendor is covered equipment or covered services under 2 CFR §200.216.

## **13). PROFIT AS A SEPARATE ELEMENT OF PRICE**

For purchases using federal funds in excess of the Simplified Acquisition Threshold, the City of Garland may be required to negotiate profit as a separate element of the price. See, 2 CFR 200.324(b). When required by the City, Vendor agrees to provide information and negotiate with the City regarding profit as a separate element of the price for a particular purchase. However, Vendor agrees that the total price, including profit, charged by Vendor to the City of Garland shall not exceed the awarded pricing, including any applicable discount, under Vendor's Cooperative Contract.

## **14). GENERAL COMPLIANCE AND COOPERATION WITH THE CITY OF GARLAND**

In addition to the foregoing specific requirements, Vendor agrees, in accepting any Purchase Order from the City of Garland, it shall make a good faith effort to work with the City to provide such information and to satisfy such requirements as may apply to a particular City purchase or purchases including, but not limited to, applicable recordkeeping and record retention requirements

## **15). DRUG-FREE WORKPLACE REQUIREMENTS**

The Drug-Free Workplace Act of 1988 (41 U.S.C. 701) requires grantees (including individuals) of federal agencies, as a prior condition of being awarded a grant, to certify that they will provide drug-free workplaces. Each potential recipient must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR

## **16). BUY AMERICA ACT (ONLY APPLICABLE TO SPECIFIC FEDERAL GRANTS)**

(a) Definitions. As used in this clause—

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (FAR) 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C.40102(4), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into an end product.

Cost of components means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105 .

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both-

(i) An unmanufactured end product mined or produced in the United States;

(ii) An end product manufactured in the United States, if-

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all the components used in the end product. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the end product and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the definition of "cost of components".

End product means those articles, materials, and supplies to be acquired under the contract for public use.

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

Foreign end product means an end product other than a domestic end product.

Foreign iron and steel means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) 41 U.S.C. chapter 83, Buy American, provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for an end product that is a COTS item (see 12.505(a)(1)), except that for an end product that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the end product, excluding COTS fasteners.

(c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Certificate."

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