



**EQUIPMENT PURCHASE AND DELIVERY**

**INVITATION TO BID**

- ISSUE DATE: January 12, 2018
- BIDS DUE: **11:00 A.M. on January 26, 2018** (the "Submission Deadline")
- INSTRUCTIONS: Submit one completed Bid Form in a sealed envelope marked "Equipment Bid". Bids must be received by mail or personal delivery no later than the Submission Deadline.
- SUBMIT TO: Houston First Corporation, Attn: Mitch Miskowski, 701 Avenida de las Americas, Suite 200, Houston, TX 77010.
- CONTACT INFO: Any questions concerning this Invitation to Bid must be sent by e-mail to [bids@houstonfirst.com](mailto:bids@houstonfirst.com) no later than **11:00 a.m. on January 22, 2018**. Questions will be answered collectively in the form of a Letter of Clarification.
- BID OPENING: All Bids will be opened and publicly announced at 2:00 p.m. on January 26, 2018 at 701 Avenida de las Americas, Suite 200, Houston, TX 77010.

Houston First Corporation ("HFC") requests bids from commercial equipment sellers able to provide and deliver the equipment set forth in Exhibit "1" of this Invitation to Bid (the "Equipment").

**BACKGROUND.** Houston First Corporation ("HFC") is a local government corporation created by the City of Houston to enhance quality of life, advance economic prosperity, and promote Houston as a premier destination for leisure tourism and major events. HFC is responsible for management and operation of more than ten city-owned buildings and plazas, including the George R. Brown Convention Center, Jones Hall, Wortham Theater, Miller Outdoor Theatre, Talento Bilingue de Houston, and outdoor facilities such as Jones Plaza, Sesquicentennial Park, Ray C. Fish Plaza, Root Memorial Square, and several other landscaped properties and parking facilities.

On August 27, 2017, floodwater resulting from Hurricane Harvey inundated the basement of the Wortham Theater Center and filled the Theater District Parking Garages with millions of gallons of water. Time is of the essence as the Wortham Theater Center must be operational on or before July 1, 2018. This Equipment is critical to the proper function of the facility.

It is imperative that all Bidders under this solicitation effort must familiarize and adhere to the procurement standards as referenced in 2 C.F.R. Part 200, Sections 200.317-200.326, and Appendix II, 2 C.F.R. Part 200. Sections 200.317-200.326 and Appendix II.

**PRE-BID CONFERENCE.** A pre-bid conference has not been scheduled for the solicitation and HFC does not anticipate that one will be held.

**NO SALES TAX.** As HFC is exempt from states sales and use tax, bidders should assume that there will be no sales taxes due for the purchase of materials incorporated into the Project.

**LETTERS OF CLARIFICATION.** Any revisions to this Invitation to Bid, and answers to any material questions timely received, will be confirmed in a letter posted online at [www.houstonfirst.com/do-business](http://www.houstonfirst.com/do-business) prior to the Submission Deadline ("Letter of Clarification"). When issued by HFC, Letters of Clarification become part of this Invitation to Bid automatically and supersede any previous specifications or provisions in conflict therewith. By submitting a bid, bidders shall be deemed to have received all Letters of Clarification and to have incorporated them into their bid. It is the responsibility of bidders to monitor the foregoing link and ensure they receive any such Letters of Clarification.

**MANNER OF SELECTION.** HFC expects to enter into a contract with the Bidder providing the lowest responsible bid received. HFC reserves the right to select or reject all or part of any bid, waive minor technicalities, and one or more bids in the manner and to the extent that they serve the best interests of HFC. This solicitation does not commit HFC to award a contract, issue a purchase order, or to pay any costs incurred in the preparation of a bid in response to this solicitation. HFC reserves the right to request clarifications or additional information prior to making a selection.

**DIVERSITY COMMITMENT.** HFC has determined that the specific goal for this project is 0% of the total value of the agreement.

**FORM OF AGREEMENT.** By submitting a response to this solicitation, bidders agree, upon notice of selection by HFC, to enter into the Equipment Purchase and Delivery Agreement attached hereto as Exhibit "2". If a bidder takes exception to any portion of the Agreement, then such bidder must submit a list of such exceptions as part of its response to this solicitation; bidders are advised, however, that HFC shall reject bidders who take any substantive objections without further review or consideration.

**RESTRICTIONS ON COMMUNICATIONS.** Bidders are directed not to communicate with any HFC employee or director regarding any matter relating to this solicitation, other than through [bids@houstonfirst.com](mailto:bids@houstonfirst.com). HFC reserves the right to reject any bid due to violation of this provision.

**COLLUSION.** Bidders represent that the contents of their bids have not been communicated, directly or indirectly, to any potential Bidder and that their bids are made in compliance with federal and state antitrust laws without previous understanding, agreement or connection with any competitor or other potential Bidder.

**PUBLIC INFORMATION.** HFC is subject to the Texas Public Information Act ("TPIA"). Information submitted by bidders is subject to release under the provisions of the TPIA set forth in Chapter 552 of the Texas Government Code. Each page where confidential or proprietary information appears must be labeled as such clearly and unambiguously. Bidders will be advised of any request for public information that implicates their materials that have been marked "confidential and proprietary" in accordance with the foregoing, and may, in accordance with applicable law, elect to assert objections to disclosure with the Texas Attorney General at their cost and expense.

**CONFLICTS OF INTEREST.** Bidders are advised that they have an obligation to disclose any affiliation or business relationship that might cause a conflict of interest with HFC. Bidders who need the disclosure form may find it online at: <http://www.ethics.state.tx.us/forms/CIQ.pdf>. By submitting a bid, Bidders represent that they are in compliance with the requirements of Chapter 176 of the Texas Local Government Code.

**WITHDRAWAL; ERROR.** Bids may be withdrawn due to errors or for any other reason only by a written request received by [bids@houstonfirst.com](mailto:bids@houstonfirst.com) prior to the Submission Deadline.

**BID PACKAGES.** A complete copy of this Invitation to Bid, including and all necessary forms and information, is available on-line at [www.houstonfirst.com/Do-Business](http://www.houstonfirst.com/Do-Business).

**Exhibit "1"  
Equipment List**

<b>Item</b>	<b>Equipment Description</b>	<b>Quantity</b>	<b>Price</b>
A	Supply and delivery of 600A Medium Voltage Fused Switches with fuses to protect 1500kVA Dry Type Transformer	2	\$
B	Supply and delivery of 1500kVA Dry Type Transformer	2	\$
C	Supply and delivery of 4000A 208V Low Voltage Distribution Switchboard	2	\$
D	Supervision of Installation by Factory Trained Representative	1	\$
E	Shop Drawings (also referred to as First Articles in the Equipment Specifications) for all Equipment set forth above.	As required in the Equipment Specifications	\$
Total Price (A+B+C+D+E = the Contract Value)			\$
<p>Time is of the essence. The Wortham Theater Center must be operational on or before July 1, 2018. The Equipment listed above is critical to the operation and opening of the facility.</p> <p>Liquidated Damages for Delay/Premium Payments/Credits for Early Delivery:</p> <ol style="list-style-type: none"> <li>1. Early delivery and subsequent architect/MEP approval of Shop Drawings, as required in the Equipment Specifications will result in the Contractor receiving a premium payment/credit of \$1,000 per day that the Shop Drawings are delivered early, not to exceed a total premium payment/credit of \$5,000.</li> <li>2. Failure to deliver the Shop Drawings as required in the Equipment Specifications will result in liquidated damages assessed against the Contractor in the amount of 50% of the Price shown in Item E above, but not less than \$10,000.</li> <li>3. Early delivery of the Equipment listed in Items A through C above will result in the Contractor receiving a premium payment/credit of \$2,000 a day, but not to exceed a total premium payment/credit of \$20,000.</li> <li>4. Failure to deliver the Equipment listed in Items A through C above by March 31, 2018 will result in liquidated damages assessed against the Contractor in the amount of \$10,000 per day, but not to exceed \$50,000.</li> </ol>			

## Exhibit "2"

### EQUIPMENT PURCHASE AND DELIVERY AGREEMENT

This Equipment Purchase and Delivery Agreement ("Agreement") is made by and between Houston First Corporation ("HFC"), whose address is 701 Avenida de las Americas, Suite 200, Houston, TX 77010 and [TBD] ("Contractor"), whose address is [TBD]. In consideration of the mutual promises contained herein, the parties hereby agree as follows:

#### ARTICLE 1: EQUIPMENT & DELIVERY

1.1 Contractor agrees to and shall provide and deliver the equipment set forth in Exhibit 1, Equipment List, to this Agreement (collectively, the "Equipment") to the following address: **501 Texas Ave, Houston, TX 77002**.

1.2 In accordance with the Equipment Specifications attached to this Agreement as Exhibit 2, Contractor shall deliver Shop Drawings for all Equipment no later than seven calendar days after HFC's execution of this Agreement.

1.3 Contractor shall coordinate the schedule of delivery of the Equipment with HFC. However, Contractor shall ensure that delivery of the Equipment is made on or before **March 31, 2018**, during normal business hours, and Contractor shall provide any equipment, labor, packaging, crating or padding necessary to load, tie down and unload the Equipment to be delivered, so that the Equipment may be transported in a normal, safe manner without damage. Contractor acknowledges that time is of the essence.

1.4 HFC reserves the right to inspect the Equipment prior to acceptance and/or payment. Equipment which, in the opinion of HFC, does not conform to HFC's specifications or are determined to be damaged or defective may be rejected at no cost to HFC. Amounts due Contractor under this Agreement for such rejected goods shall abate or, at the discretion of HFC, Contractor shall promptly replace rejected Equipment, at its risk and expense.

1.5 Title and risk of loss of the Equipment shall remain with Contractor until goods have been delivered to HFC at the location specified in this Agreement and accepted by HFC. Contractor is responsible for any freight charges incurred in so delivering the goods to HFC.

1.6 HFC is exempt from sales tax and certain federal excise taxes and agrees to furnish Contractor with an exemption certificate upon request. Contractor shall not charge HFC for such taxes. Contractor shall take all action required to cause the purchase of the Equipment hereunder to be treated as a tax-exempt transaction, and in no event shall HFC be responsible for any sales, use, property, gross receipts, or similar taxes levied against any party to this Agreement.

#### ARTICLE 2: PAYMENT

2.1 Subject to the terms of this Agreement, HFC agrees to pay Contractor [TBD], due and payable in the following installments:

- a) Upon HFC's receipt of the approved Shop Drawings/First Articles from the Contractor, HFC shall pay Contractor 10% of the Contract Value set forth on Exhibit 1;
- b) Upon Delivery of all Equipment, HFC shall pay Contractor 80% of the Contract Value set forth on Exhibit 1; and
- c) Upon Contractor's Certification that the installation has been completed in accordance with the manufacturer's recommendations, HFC shall pay Contractor 10% of the Contract Value as set forth on Exhibit 1.

Notwithstanding the above, all payments shall be adjusted for either liquidated damages assessed against Contractor in accordance with Exhibit 1 or premium payments/credits due to Contractor as assessed in accordance with Exhibit 1.

2.2 Payments are conditioned on prior receipt by HFC of a written invoice and W-9 from Contractor

2.3 If any item in any invoice is disputed by HFC for any reason, then HFC shall temporarily delete the disputed item and pay Contractor the remaining amount of the invoice; provided, however, that HFC shall promptly notify Contractor of the dispute and request clarification and/or remedial action. After any dispute shall have been settled,

Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

### ARTICLE 3: WARRANTIES

3.1 Contractor represents and warrants to HFC that the Equipment, including each component part thereof, shall be (i) fit for the intended purposes indicated by HFC expressly or by implication; (ii) free of defects in title, design, material, and workmanship, (iii) new, and of satisfactory quality; and (iv) in conformity with industry standards and the requirements of this Agreement. Warranty periods shall commence upon Contractor's certification that the installation has been completed or energization of Equipment, whichever is later.

3.2 Equipment not conforming to the requirements of this Section shall be deemed defective and shall be repaired or replaced by Contractor (at HFC's sole option) at no cost to HFC. If required by HFC, Contractor shall furnish satisfactory evidence as to the kind and quality of replacement materials and equipment.

3.3 If, within the period of the manufacturer's warranty as determined by the Equipment Specifications, any of the Equipment is found to be not in accordance with the requirements of the Agreement, then Contractor shall correct same within 30 calendar days after receipt of written notice from HFC to do so and at no cost to HFC.

3.4 Contractor hereby transfers and assigns to HFC all manufacturer's warranties for materials used in connection with the Equipment and shall complete and execute all forms required to further evidence such transfer and assignment. The parties agree that no warranty made by Contractor is intended to limit, nor shall it be construed as limiting in any manner or to any extent, any manufacturer's or supplier's warranty. Upon request from HFC, Contractor agrees to provide reasonable assistance in enforcing such warranties against the manufacturer or supplier at no additional cost to HFC.

### ARTICLE 4: TERM, DEFAULT AND TERMINATION

4.1 The term of this Agreement shall begin upon the date this Agreement is executed by the President & CEO of HFC and shall continue for one year thereafter (the "Term").

Either party may terminate this Agreement for cause if the other party defaults and fails to cure the default after receiving notice thereof. Default occurs if a party fails to perform one or more of its material duties under this Agreement. If a default occurs, then the injured party shall deliver a written notice to the defaulting party describing the default and the proposed termination date. The date must be at least five calendar days after receipt of the notice. The injured party, at its sole option, may extend the proposed termination date to a later date. If the defaulting party cures the default before the proposed termination date, then the proposed termination is ineffective. If the defaulting party does not cure the default before the proposed termination date, then the injured party may terminate this Agreement on the termination date.

4.2 HFC may terminate this Agreement at any time by giving written notice to Contractor. HFC's right to terminate for convenience is cumulative of all rights and remedies, which exist now or in the future. On receiving such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all deliveries under the Agreement and cancel all existing orders and subcontracts that are chargeable to the Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the Equipment delivered up to the termination date.

**4.3 TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR EQUIPMENT RECEIVED ARE CONTRACTOR'S EXCLUSIVE REMEDIES FOR TERMINATION FOR CONVENIENCE BY HFC, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT FOR EQUIPMENT DELIVERED), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM HFC'S TERMINATION FOR CONVENIENCE.**

### ARTICLE 5: REQUIRED CONTRACT CLAUSES

5.1. Equal Employment Opportunity. During the performance of this Agreement, Contractor agrees as follows:

- (1) Contractor will not discriminate against any employee or applicant for employment because of race, color,

religion, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

5.2. Contract Work Hours and Safety Standards Act. Contractor shall comply with the Contract Work Hours and Safety Standards Act, 40 U.S.C. sections 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5), including all of the following requirements:

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in this section, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard



workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

- (3) Withholding for unpaid wages and liquidated damages. HFC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in this section.
- (4) Subcontracts. Contractor and its subcontractors shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor, as prime contractor, shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

5.3. Clean Air Act. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. Contractor agrees to report each violation to HFC and understands and agrees that HFC will, in turn, report each violation as required to assure notification to the Texas Division of Emergency Management, FEMA, and the appropriate regional office of the Environmental Protection Agency. Contractor agrees to include these requirements in each subcontract exceeding \$150,000.

5.4. Federal Water Pollution Control Act. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. Contractor shall report all violations to HFC, and understands and agrees that HFC will, in turn, report each violation as required to assure notification to the Texas Division of Emergency Management, FEMA, and the appropriate regional office of the Environmental Protection Agency. Contractor agrees to include these requirements in each subcontract exceeding \$150,000.

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

5.6 Byrd Anti-Lobbying Amendment. Contractor and its contractors of any tier who apply or bid for an award of \$100,000 or more shall file the required certification in accordance with 31 U.S.C. §1352 (as amended). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Contractor shall promptly forward each such disclosure from tier to tier up to HFC.

5.7 Certification Regarding Lobbying. Contractor shall cause each of its contractors of any tier to complete and submit the following certification regarding lobbying (See Appendix A, 44 C.F.R. Part 18) with each bid or offer exceeding \$100,000:



[Name of contractor], the undersigned, certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of this agreement or any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this agreement or any Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Name of contractor] certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name/Title of Authorized Official

5.8. Procurement of Recovered Materials. In the performance of this Agreement, Contractor shall make maximum use of products containing recovered materials that are Environmental Protection Agency ("EPA")-designated items, unless the product cannot be acquired competitively within a timeframe providing for compliance with the contract performance schedule; meeting contract performance requirements; or at a reasonable price. Information about this requirement, along with the list of EPA-designate items, is available online at the EPA's Comprehensive Procurement Guidelines site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

5.9 Changes. This Agreement may not be changed or altered except in the form of a written amendment signed by authorized representatives of Contractor and HFC. Any such amendment requiring payment of additional fees shall include a defined scope of services and a detailed description of the specific methodology used to determine the additional fees, which Contractor agrees shall be reasonable and calculated in good faith in a manner substantially similar to the method used to determine the fee under this Agreement.

5.10 Access to Records. Contractor grants HFC, FEMA, the Texas Department of Emergency Management, and the Comptroller General of the United States, including any of their authorized representatives, access and the right to examine and review Contractor's books, documents, papers, and records that are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. Contractor shall maintain such books, records, and billing documents for 3 years after the cessation of Contractor's services under this Agreement. Nothing in this Section shall affect the time for bringing a cause of action or the applicable statute of limitations. Contractor agrees to provide HFC, FEMA, the Texas

Department of Emergency Management, and the Comptroller General of the United States, including any of their authorized representatives, access to construction or other work sites pertaining to the work being completed under this Agreement.

5.11 DHS Seal, Logo, and Flags. Contractor shall not use the Department of Homeland Security ("DHS") seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

5.12 Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance will be used to fund the Agreement only. Contractor will comply with Applicable Law, including but not limited to federal law, regulations, executive orders, FEMA policies, procedures, and directives.

5.13 No Obligation by Federal Government. The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to HFC, Contractor, or any other party pertaining to any matter resulting from the Agreement.

5.14 Program Fraud and False or Fraudulent Statements or Related Acts. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to this Agreement.

## ARTICLE 6: MISCELLANEOUS PROVISIONS

6.1 Force Majeure. Timely performance by both parties is essential to this Agreement. However, neither party will be liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. For purposes of this Agreement, Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders and the acts of superior governmental or military authority. This relief is not applicable unless the affected party does the following: uses due diligence to remove the Force Majeure as quickly as possible; provides the other party with prompt written notice of the cause and its anticipated effect; and provides the other party with written notice describing the actual delay or non-performance incurred within 7 calendar days' after the Force Majeure ceases. If the Force Majeure continues for more than 30 calendar days, then either party may terminate this Agreement by giving 15 calendar days' written notice to the other party; such termination is not a default or breach of this Agreement.

6.2 Assignment. Contractor shall not assign this Agreement in whole or in part without the prior written consent of HFC. For purposes hereof, any transfer of ownership interests in Contractor, direct or indirect, occurring after the Effective Date shall be deemed an assignment by Contractor requiring prior written consent of HFC. HFC may assign this Agreement in whole or in part, including any enforcement rights granted hereunder, at any time upon written notice to Contractor.

6.3 Non-Waiver. Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

6.4 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed received when actually received or if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the other party at the address prescribed in the preamble hereof or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.

6.5 Independent Contractor. The relationship of Contractor to HFC shall be that of an independent contractor. No principal/agent, partnership, joint venture, joint employer, or other relationship, other than an independent contractor relationship, is created or intended by this Agreement.

6.6 Governing Law/Venue. To the extent not preempted by federal law or regulation, this Agreement shall be construed and enforced in accordance with the laws of the State of Texas, notwithstanding any choice-of-law or conflicts-of-law rules to the contrary. Any action to enforce this Agreement or any litigation or claims otherwise regarding this Agreement must be brought in a court of competent jurisdiction in Harris County, Texas.

6.7 Severability. Each and every agreement contained in this Agreement is, and shall be construed as, a separate and independent agreement. If any provision of this Agreement should be held to be invalid or unenforceable, then the validity and enforceability of the remaining provisions of this Agreement to another person or circumstance shall not be affected thereby.

6.8 Survival. Contractor shall remain obligated to HFC under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of the term of this Agreement.

6.9 Extent of Agreement. This Agreement, including the exhibits made a part hereof, represents the entire and integrated agreement between HFC and Contractor and supersedes all prior negotiations, representations or agreements either written or oral.

[Remainder of page left blank intentionally; signature block to be inserted in final agreement]

EXHIBIT 1  
EQUIPMENT LIST

**EXHIBIT 2  
EQUIPMENT SPECIFICATIONS**

