

# THE CITY OF **Edinburg**

**RFP #: 2022-015**

**DEBRIS MONITORING  
&  
RECOVERY PLANNING  
SERVICES**

**BID DUE DATE:**

**Tuesday, April 19, 2022**

**Due Time:**

**3:00 P.M., C.S.T.**



**SOLID WASTE  
MANAGEMENT**

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Department of Solid Waste Management  
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**SECTION I. GENERAL TERMS AND CONDITIONS**

This Request for Proposals (RFP) is issued by the CITY of EDINBURG(hereinafter referred to as the CITY) for the purpose of entering into a contract with a disaster recovery mitigation and debris management consultant (hereinafter referred to as the CONSULTANT) who will provide consulting and contract compliance monitoring services related to the contracted disaster debris removal and disposal activities. The services provided by the CONSULTANT will assist the CITY in satisfying the FEMA Public Assistance Debris Monitoring and Reporting Requirements.

The CONSULTANT must be knowledgeable in TxDOT, TCEQ, FEMA and Federal Highway Administration (FHWA) regulations, guidelines, and operating policies and planning requirements. The CONSULTANT shall monitor, report, and coordinate with the disaster debris removal Contractor(s) and the CITY activities to ensure a compliant, well-managed and organized approach to debris removal and disposal within applicable TxDOT, TCEQ, FEMA and FHWA guidelines.

The scope of services excludes any other compliance services that are included in federal or state disaster relief, or in any separate contract with the CITY. This will not be an “exclusive” contract and should not be construed as such. The CITY reserves the right, subject to negotiation and agreement, in writing, with the selected firm, to either expand or limit the scope of services as needed. The selected firm will be required to have personnel on-site to complete the tasks required by this scope of services. The selected firm will complete the required tasks in a timely and efficient manner.

**ADDITIONAL INFORMATION:** COE of Edinburg is requesting that RFP’s be routed to: City Secretary, at 415 West University Drive, Edinburg, Texas 78541.

**CONFLICT OF INTEREST:** Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with COE, shall file a completed conflict of interest questionnaire with COE Secretary not later than the 7th business day after the date that the person: (1) begins contract discussions or negotiations with COE; or (2) submits to COE an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with COE. The conflict of interest questionnaire form is available from the Texas Ethics Commission at [www.ethics.state.tx.us](http://www.ethics.state.tx.us). Completed, executed conflict of interest questionnaires may be mailed or delivered by hand to the City Secretary’s Office. If mailing a completed conflict of interest questionnaire, mail to: City Secretary’s Office, P.O. Box 1079, Edinburg, TX 78539. If delivering a completed, executed conflict of interest questionnaire, deliver to: City Secretary’s Office, City of Edinburg City Hall, 415West University Dr., Edinburg, TX 78540. Proposers should contact its own legal counsel with any questions regarding the statute or form.

**CERTIFICATE OF INTERESTED PARTIES (Form 1295)**

In 2015, the Texas Legislature adopted [House Bill 1295](#), which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016. For more information go to the Texas Ethics Commission web page at <https://www.ethics.state.tx.us/filinginfo/1295/>.

**HB 89**

The 85th Texas Legislature approved new legislation, effective Sept. 1, 2017, which amends Texas Local Government Code Section 1. Subtitle F, Title 10, Government Code by adding Chapter 2270 which states that

a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

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

### **SB 13 ENERGY COMPANY BOYCOTTS**

The 87th Texas Legislature approved new legislation, effective Sept. 1, 2021, which amends Texas Local Government Code 2274.001. Subtitle F, Title 10, Chapter 809 which states that a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

- 1) does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Respondent does not make that verification, Respondent must so indicate in its Response and state why the certification is not required , or
- 2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Respondent shall promptly notify Agency.

### **SB 19 FIREARM ENTITIES AND TRADE ASSOCIATIONS DISCRIMINATIONS**

The 87th Texas Legislature approved new legislation, effective Sept. 1, 2021, which amends Texas Local Government Code Section 1. Subtitle F, Title 10 of the Texas Government Code 2274.002, Respondent verifies that it:

- 1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and
- 2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

If Respondent does not make that verification, Respondent must so indicate in its Response and state why the verification is not required. If circumstances relevant to this provision change during the course of the contract, Respondent shall promptly notify Agency.

### **ETHICAL STANDARD**

No City official or employee shall have interest in any contract resulting from this bid.  
The following forms must be completed with your bid response.

- **Conflict of Interest Questionnaire**
- **HB 89 Verification Form**
- **SB 13 Verification Form**
- **SB 19 Verification Form**

The forms stated above **MUST** be returned as part of your Bid response. Failure to include these forms may result in your Bid being considered unresponsive and therefore disqualified. Sample copies of these forms are included in the Bid. \* **FORM 1295 (CERTIFICATE OF INTERESTED PARTIES) is not required with the bid submittal but will be required from the awarded party before entering into a contract with the City of Edinburg.**

**NON-COLLUSION:** Submitters, by submitting a signed submission, certify that the accompanying submission is not the result of, or affected by, any unlawful act of collusion with any other person or company engaged in the same line of business or commerce, or any other fraudulent act punishable under Texas or United States law.

**NON-DISCRIMINATION:** Submitters, during the performance of this contract, will not discriminate against any employee or applicant for employment because of race, religion, sex, national origin or disability except where



religion, sex, national origin or disability is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor.

**PROCESSING TIME FOR PAYMENT:** Submitters are advised that a minimum of thirty (30) days is required to process invoices for payment.

**ELECTRONIC SUBMISSION OF BIDS:** City of Edinburg's City Secretary Department will not accept telegraphic or electronically transmitted submissions.

**PROOF OF FINANCIAL AND BUSINESS CAPABILITY:** Submitters must, upon request, furnish satisfactory evidence of their ability to furnish products or services in accordance with the terms and conditions of these requirements. COE will make the final determination as to the submitter's ability.

**SUBMITTER DEFAULT:** City of Edinburg reserves the right, in case of submitter default, to procure the articles or services from other sources and hold the defaulting submitter responsible for any excess costs occasioned thereby.

**RESTRICTIVE OR AMBIGUOUS REQUIREMENTS:** It is the responsibility of the submitter to review the Request For Proposals (RFP) packet and to notify COE Purchasing Department if the requirements are formulated in a manner that would unnecessarily restrict competition. Any such protest or question regarding the requirements or bidding procedures must be received in COE Secretary Department not less than seventy-two hours prior to the time set for the opening. These criteria also apply to requirements that are ambiguous.

**RFP DELIVERY:** City of Edinburg requires submitters, when hand-delivering statements of qualifications, to have a City of Secretary Department representative time/date stamp and initial the envelope.

**SIGNING OF QUALIFICATIONS:** In order to be considered, all submittals must be signed. Please sign the original in blue ink.

**WAIVING OF INFORMALITIES:** COE reserves the right to waive minor informalities or technicalities when it is in the best interest of COE.

**SUBCONTRACTING:** The successful submitter may not subcontract the award without the written consent of COE.

**TERM** The initial term of the contract shall be from awarded date to September 30, 2023, with an option to renew for two additional one-year terms at the discretion of the Edinburg CITY Council.

**PRE-PROPOSAL CONFERENCE:** A Pre-Proposal Conference will not be scheduled unless it is formally requested by all interested parties.

**BIDDER RESPONSIBILITY:** It is the responsibility of each vendor before submitting a proposal:

- To examine thoroughly the contract documents and other related data identified in the proposal documents.
- To visit the site to become familiar with and satisfy vendor as to the general, local, and site conditions that may affect cost, progress, performance, etc.
- To consider federal, state, and local laws and regulations that may affect costs, progress, performance or furnishing of the work.
- To study and carefully correlate vendor's knowledge and observations with the contract documents and such other related data.

- To promptly notify COE Purchasing of all conflicts, errors, ambiguities, or discrepancies which vendor has discovered in or between the contract documents and such other related documents.

**TERMINATION:** COE has the authority and express right to terminate any Agreement awarded under this RFP or any Work Order resulting from the Agreement at any time during the term of the Agreement for any reason, including but not limited to, instances where COE finds that the Contractor's work is negligent, not satisfactory, with or without cause, or not in accordance with the Agreement requirements.

**FIRM PRICING:** Unless otherwise negotiated at the time of contract award, all fees for services shall remain fixed throughout the contract, including renewals. The City reserves the right to negotiate reductions in the price due to changes in the market conditions during the contract period and renewals.

**ESCALATION/DE-ESCALATION:** In subsequent terms, an annual price change (based on the Bureau of Labor Statistics, Consumer Price Index escalation) may be considered on the anniversary of the term. Price changes may not exceed 3% per year or the most recent 12 month CPI-U table, if less than 3% per annum.

**RETENTION OF BIDDER MATERIAL:** Any and all information submitted in conjunction with this RFP and the evaluation process will not be returned to the Bidder.

## **SECTION II. RFP REQUIREMENTS**

**PURPOSE:** The intent of this Request for Proposal and resulting contract is to provide Disaster Management and Recovery Planning Services during a declared emergency activation.

**REQUEST FOR PROPOSALS:** The COE requires disaster management, recovery, and consulting services to support the oversight and management of debris recovery contractors. Other services may include, but not limited to, facilitating communication with FEMA, FHWA, the State of Texas and other State and Federal agencies. The required contents and limitations for the preparation of the RFP are described in this section. Failure to provide the requested information or adhere to any COE limitations will result in disqualification of the submitted RFP. A total of one (1) original and five (5) copies of the RFP shall be submitted to the address on the cover letter.

**SUBMITTAL:** For proper comparison and evaluation, COE requests that proposals address, at a minimum, the following format.

- **Cover Letter** - A brief introductory letter of representation.
  - *The cover letter should also:*
    - *Identify the submitting Proposer;*
    - *Identify the name, title, address, telephone number, fax number, and email address of each person authorized by the Proposer to contractually obligate the Proposer;*
    - *Identify the name, address, telephone number, fax number, and email address of the contact person for technical and contractual clarifications throughout the evaluation period.*
- **Executive Summary** - A brief summary highlighting the most important points of the proposal. The Summary should include Proposer's understanding and approach to the project. It should contain a summary of Proposer's ability to perform the services described in the RFP and confirm that Proposer is willing to perform those services and enter into a contract with the COE. If used, the Summary should not exceed five pages.
- **Degree of Compliance** - A statement that all products and services quoted in proposal is in full accord with the specifications or a brief listing of all those specification sections to which the

Proposer takes exception. All explanations, exceptions, comments, etc., pertaining to the specific sections of the specifications. All comments shall be listed and numbered in order of the respective article of the specification.

**CONTENTS:** The required contents for the RFP are presented below in the order they should be incorporated into the submitted document.

- **Proposer Qualifications and Experience:** History and background of Proposer, financial strength and stability, competence of management and key staff that would be assigned to the project, related services provided to government entities, existing customer satisfaction, a minimum of three (3) references including contact names, phone numbers and email addresses and current contracts for disaster related services which they are obligated to fulfill during the term of this agreement and a Parishment of litigation that the firm or staff is currently involved in, or has been involved in over the last (5) years, stating points of contention and results, if available.
- **Proposed Solution/Technical Response:** Illustrating and describing proposed technical solution and compliance with the RFP requirements.
- **Innovative Concepts:** Presentation of innovative concepts, if any, for consideration.
- **Project Schedule:** Detailed schedule of implementation plan. This schedule is to include implementation actions, timelines, responsible parties, etc.
- **Financial Proposal:** Proposer's fees and other costs, if any, shall be submitted in accordance with Attachment 1: Financial Proposal – for RFP evaluation and Exhibits 1-3 for contracting purposes. Prices proposed shall be firm for the duration of the contract. This financial proposal shall include any and all costs the Contractor wishes to have considered in the contractual arrangement with COE. It shall include details about the firm's invoice process.

### **SECTION III. SCOPE OF SERVICES, TRAINING AND JOB REQUIREMENTS**

#### **SCOPE OF WORK/SERVICES**

It is the intent of this agreement that the contractor will ensure that hazards to life and property are removed as quickly as possible and expenses be qualified for reimbursement from state and/or federal agencies to the maximum extent possible. The selected firm's response must be immediate, rapid, and efficient, with acceptable cost controls, accountability procedures, with written reports and submittals in place, to assure that the COE will have the means to be reimbursed for all eligible disaster recovery costs from appropriate Federal and State Agencies. The scope of work is as follows but is not limited to:

#### **A. DISASTER DEBRIS MONITORING SERVICES:**

The selected firm will be expected to provide disaster debris monitoring services to include debris generated from the public rights-of-way, drainage areas/canals, waterways, and other public, eligible, or designated areas.

Specific services may include:

1. Coordinating daily briefings, work progress, staffing, and other key items with the City.
2. Selection and permitting of TDSRS locations and any other permitting/regulatory issues as necessary.
3. Scheduling work for all team members and contractors on a daily basis.

4. Hiring, scheduling, and managing field staff.
5. Monitoring recovery contractor operations and making/implementing recommendations to improve efficiency and speed up recovery work.
6. Develop forms, databases, etc. for tracking field activities, submitting invoices to FEMA, FHWA, etc. Such forms, databases and invoices must be compatible with City software and approved by designated City personnel.
7. Assisting the City with responding to public concerns and comments.
8. Certifying contractor vehicles for debris removal using methodology and documentation practices appropriate for contract monitoring.
9. Entering load tickets into a database application.
10. Digitization of source documentation (such as load tickets).
11. Developing daily operational reports to keep the City informed of work progress.
12. Development of maps, GIS applications, etc. as necessary.
13. Comprehensive review, reconciliation, and validation of debris removal contractor(s) invoices prior to submission to the City for processing.
14. Project Worksheet and other pertinent report preparation required for reimbursement by FEMA, FHWA and any other applicable agency for disaster recovery efforts by City staff and designated debris removal contractors.
15. Provide monitors to monitor disaster debris removal contractors to ensure collection is conducted in accordance with City, FHWA, FEMA and other required standards, including contractual provisions specified in City disaster debris collection contract. Ensure that only eligible debris quantities are being claimed for Public Assistance.
16. Provide monitors at designated check points to check and verify information on debris removal and at Debris Management Sites (DMSs) located throughout the City.
17. Debris monitors must have the ability to estimate debris quantities, differentiate between debris types, properly fill out load tickets and follow all safety procedures. Responsibilities of monitors include, but are not limited to:
  - a. Report issues to their direct supervisor which require action, such as safety concerns, debris removal contractor noncompliance and equipment use.
  - b. Properly and accurately complete and physically control load tickets.
  - c. Ensure that trucks are accurately credited for their load.
  - d. Ensure that trucks are not artificially loaded (ex: debris is wetted, debris is fluffed, not compacted).
  - e. Ensure that hazardous wastes are not mixed in loads.
  - f. Ensure that C&D debris is not mixed in loads of vegetative debris.



- g. Ensure that all debris is removed from trucks at DMSs.
  - h. Report if improper equipment is used.
  - i. Report if debris removal contractor personnel safety standards are not followed.
  - j. Report if general public safety standards are not followed.
  - k. Report if completion schedules are not on target.
  - l. Ensure that only debris specified in the contract is collected and is identified as eligible or ineligible.
  - m. Assure work is within the assigned scope of work.
  - n. Report to supervisor if debris removal work does not comply with all local ordinances as well as State and Federal regulations (i.e., proper disposal of hazardous wastes).
  - o. Debris monitors are to submit daily reports on load quantities
18. Disaster related damage assessment and reconstruction services, as needed.
  19. Final report and appeal preparation and assistance.
  20. Cost recovery of eligible funds currently not obligated or potentially de-obligated by appropriate funding agencies. Separate pricing structures for this service may be included in the Consultant's proposal.
  21. Other disaster recovery services as requested by the City.

## **B. EMERGENCY MANAGEMENT PLANNING AND TRAINING**

If requested by the City, the Consultant shall provide:

1. Comprehensive emergency management plans (e.g. COOP, EOP) to include plan development; review, and revisions.
2. Comprehensive mitigation programs to include development of mitigation plan(s), staff training, cost benefit analysis, project management, environmental review and staff augmentation.
3. Development of a debris management plan – including identification of an adequate number of TDSRS locations. Staff training as necessary.
4. Procurement assistance for debris removal contractors and other services as requested.
5. Project management to include the formulation and management of permanent work projects, task force management and TDSRS.
6. Technical support and assistance in developing public information.
7. Other training and assistance as requested by the City.
8. Other reports and data as required by the City.
9. Other emergency management and consulting services identified and required by the City.

## **C. DAMAGE ASSESSMENT AND RECONSTRUCTION SERVICES**

If requested, the Consultant shall provide post-disaster damage assessment and reconstruction services to include assessment, planning, engineering, and construction management services. Specific areas where services may be requested include City facilities, utility systems, transportation systems, and other sectors as required. The consultant will assist, if directed by the City, with document preparation of permanent work projects.

#### **OTHER AGREEMENTS:**

- The selected firm(s) shall provide on the work site(s) a qualified accessible supervisor(s) or liaison officer as directed. At least one (1) accessible and designated supervisor in the area of operation and the liaison officer shall have full authority to act on behalf of the Firm(s) and its subcontractors and all communications given to the supervisor or liaison officer in writing by COE's authorized representative shall be as binding as if given to the Firm(s).
- The selected firm(s) shall assist in conducting an annual tabletop exercise(s) to determine the adequacy of the debris removal plan and debris management process.
- Adequately handle property damage claims which result from contractor's errors or omissions.
- CONSULTANT shall review, validate and reconcile debris management contractor(s) invoices prior to submission to the CITY for processing. The CONSULTANT shall conduct a meeting at the beginning of the debris management operation to fully explain the process to the CITY, debris contractor(s) and FEMA representatives. All invoices from the debris contractor(s) shall be directed to the CONSULTANT. The invoices shall be reviewed by the CONSULTANT to be accepted or rejected in a timely manner. The CONSULTANT shall issue in writing to the CITY and the debris contractor, the acceptance or rejection of the invoices and a payment recommendation. If the invoice is rejected, the monitoring CONSULTANT shall clearly state the reasons for rejection and work with the debris contractor to resolve immediately. Only invoices that are accurate and complete will be forwarded to the CITY's Project Manager for payment.
- CONSULTANT shall assist the CITY in reviewing and processing requests for payment by the debris removal and disposal contractor(s) as well as in preparing final reports necessary for reimbursement by FEMA, FHWA (Federal Highway Administration) and other applicable agencies by CITY staff and designated debris removal and disposal contractor(s).
- CONSULTANT shall assist in ensuring that processing of federal funding is done as quickly as possible, by verifying the following information is accurate and promptly provided:
  1. Review of debris contractor invoices
  2. Monitoring information
  3. Project Status Reports
  4. Completed Load tickets
  5. CONSULTANT payroll
  6. Review of debris contractor equipment hours of operation
  7. Vehicle certifications
  8. Start and end dates of the first debris removal pass and all subsequent passes
- CONSULTANT shall provide professional oversight to monitor compliance with environmental and transportation regulations, FEMA reporting requirements, and any other federal, state, or local regulation that pertains to debris recovery operations. The CONSULTANT shall stay current with FEMA and FHWA policies and procedures and notify the CITY's Project Manager immediately as changes occur.

- CONSULTANT shall be capable of providing a 1-800 service to respond and report on resident inquiries during the performance of debris removal and disposal activities.
- CONSULTANT shall provide regular status updates to the CITY's Project Manager for public information use.
- CONSULTANT shall provide appropriate staff to assist with damage complaints resulting from the debris removal. Complaints shall be tracked and forwarded to the project management team to be resolved with the debris contractor(s). A weekly log of such complaints and their resolution shall be provided to the CITY's Project Manager. Property damage complaints must be tracked using a GIS. Any photos of the property damage must be linked in the GIS. A geodatabase shall be provided to the CITY with weekly updates. Upon request of the CITY, the CONSULTANT may also be called upon to provide appropriate staffing of a customer call center to assist with public telephone inquiries, concerns and complaints regarding debris removal operations.
- CONSULTANT shall provide the CITY's Project Manager and the debris contractor(s) with daily Disaster Debris Status Reports. Each daily report shall contain the following:
  1. Overview of daily activities including status of damage complaints
  2. Cumulative debris tally by debris site
  3. Cumulative debris tally by day
  4. Summary of monthly debris removal efforts (cumulative and by debris site)
  5. Summary of mulch removal efforts (cumulative and by debris site)
  6. Summary of mixed/construction & demolition removal efforts (cumulative and by debris site)
  7. Stump volume by site
  8. Debris site status
  9. Labor force report
  10. Debris site processing equipment summary

This reporting is due no later than 12:00 noon the following business day or as requested by the CITY

- CONSULTANT shall complete a certification on each vehicle deemed appropriate for collection. In addition to completing vehicle certification forms, photographs must be taken of each vehicle showing the vehicle number and type of vehicle. These photographs shall be attached with the certification. Original copies of these certifications, including photographs, shall be retained by the CONSULTANT on behalf of the CITY and provided to the CITY upon their request or project completion. Additional copies shall be provided to the debris removal contractor and the vehicle driver. Once these vehicles are certified, random verifications shall be performed at each DMS to assure that no vehicle modifications have been made and to confirm data accuracy.
- CONSULTANT shall measure the volume to the nearest cubic yard of usable space for each debris collection vehicle. The CONSULTANT shall complete the Vehicle Certification Form provided for each vehicle. The original Vehicle Certification Form shall be delivered to the CITY Project Manager or designee. The CITY Vehicle Certification Form will have the following information:
  1. Vehicle make, model
  2. Length

3. Width
4. Height
5. Volume in cubic yards
6. Tag number of vehicle
7. VIN number of vehicle
8. Vehicle type
9. Driver of vehicle name (printed) and signature
10. Sub-Contractor representative name (printed) and signature
11. Certification monitor name (printed) and signature certifying vehicle
12. Date
13. Vehicle certification number

- CONSULTANT's Project Manager or designee shall review all truck certification forms with the debris contractor to assure completeness and accuracy of each form before forwarding to the CITY'S Project Manager or designee.

### **JOB REQUIREMENTS:**

Written daily reports denoting areas worked, quantities removed, quantity of equipment in service, area to be worked the following day or days, weather report, problems and issues noted, problems and issues corrected.

On a weekly basis, COE with both Debris Removal contractor and Debris Monitoring contractor, Strategic Targets will be identified for the following week and a compliance report will due the following week to account for the completion/non completion of each of the identified targets.

Accounting protocols include a bi-monthly reconciliation of records with the COE, Debris Removal contractor, and Debris monitoring contractor so that errors and omissions are handled expediently and that the quality of the accounting is established and reviewed.

### **PERFORMANCE MEASUREMENT/EVALUATION**

Restoration of the affected areas of the COE to environmentally safe and economically viable conditions with the work done in compliance to the contract and applicable statutes and codes that effect eligibility for reimbursement from applicable State and Federal agencies is the valuable final product against which performance will be measured.

**COE reserves the right to randomly inspect and test personnel on duty to determine the FIRM's compliance with applicable rules, regulations professional standards and policies as they correspond to the emergency and its tasking orders. Personnel will be notified of the results of such tests. Documented failure to comply will be basis for termination.**

## **SECTION IV. SELECTION AND SCHEDULES**

**SELECTION PROCEDURES:** The RFP shall be submitted according to the schedule below. The respondent should be able to submit a Cost Proposal along with the RFP or on short notice at a later time.

**PROPOSAL RANKING:** Departmental Committees will evaluate and rank the written RFPs on a per project basis. After the RFPs have been ranked, the respective department will make a recommendation to COE Council.

**NEGOTIATING PROCESS:** If negotiations prove unsuccessful, the next highest ranked firm will be contacted. COE reserves the right to reject any and all RFPs.

**RFP SUBMITTED TO:** An original and three (3) copies of RFPs should be submitted to:

**City Secretary  
City of Edinburg  
415 West University Drive  
Edinburg, Texas 78541  
Telephone (956) 388-8204  
Fax (956) 383-7111**

RFPs must be submitted by no later than 3:00 p.m. on Tuesday, April 19, 2022.

## **SECTION V. FIRM AND RFP EVALUATION**

The evaluation system consists of a 100-percentage point system. The firms will be ranked after evaluation. Categories under the 100-point system include response to RFP. Only RFP's ranked in the top 15 percentile will continue to the next stage.

### **EVALUATION:**

#### **1. QUALIFICATIONS OF THE FIRM:**

A. Contractor shall provide a description and history of the firm focusing on previous governmental experience using following guidelines:

1. Recent experience demonstrating current capacity and current expertise in debris removal, solid waste and hazardous waste management and disposal.
2. Documented knowledge and experience of Federal, State and Local emergency agencies, state and federal programs, funding sources and reimbursement processes.
3. Recent experience managing disaster debris collection operations including, but not limited to: damage assessment, Right-of-Way debris removal programs, leaner / hanger removal programs, processing site monitoring, and FEMA reimbursement.

B. Provide at least five references for which the firm has performed services within the past two (2) years that are similar to the requirements in the Scope of Services. Three of the references shall be from government entities for debris monitoring experience involving a minimum of 2,000,000 cubic yards of debris. Provide the reference contact name, address, e-mail address, telephone numbers and date of the contract. A list and scope of the various projects for comparative purposes shall be included in an appendix.

#### **2. EXPERIENCE OF PROJECT TEAM/ABILITY TO COMMIT RESOURCES**

The provider shall designate experienced staff to completely and efficiently perform the work. The designated individuals may not be replaced during the project unless approved by COE. The proposal shall identify the project team composition, project leadership, reporting responsibilities and address how sub-providers, if any, will fit into the management structure. Resumes of the key technical staff members, limited to two (2) pages per person, must be included in an appendix, as well as narrative descriptions of projects proposed as similar work experience. Also, in this section, outline the firm's contingency plans for servicing the project in the event that one or more key personnel are not available for any reason during the period of performance.

Provide an organizational chart, resumes, and summary of staff qualifications. Key project staff (management staff including, but not limited to: project manager, collection and disposal operations managers, FEMA reimbursement specialist, etc.) must be full time employees of the proposing firm and have experience in the following:



1. Experience demonstrating current capacity and current expertise in debris removal, solid waste and hazardous waste management and disposal. The proposer must demonstrate experience managing debris monitoring for at least three government entities involving a minimum of 2,000,000 cubic yards of debris for each client. Recent debris monitoring from hurricanes, tornados or tropical storms is preferred.

2. Documented knowledge and experience of Federal, State and Local emergency agencies, state and federal programs, funding sources and reimbursement processes. Proposer must demonstrate experience with project worksheet preparation, contractor procurements, hauler invoice reconciliation, and appeals/reimbursement support.

### **3. METHODOLOGY**

The RFP should provide a description of the firm's approach to the methodology and management to the scope of services for the project.

### **4. UNDERSTANDING OF PROJECT/SIMILAR PROJECTS**

The RFP shall include the following:

- \* Demonstrate an understanding of the scope of services
- \* Address appropriate Federal/State/Local regulations and policies
- \* Identify information to be gathered or obtained

The firms should provide as much background information as to its experience in providing similar services to State, COE, County or any other governmental agencies. Reference information should be as current as possible, especially contact persons and telephone numbers.

### **5. FAMILIARITY WITH APPLICABLE RULES AND REGULATIONS**

The RFP should indicate, through past experience of the proposed Team, that they possess sufficient knowledge of governmental regulations, appropriate codes, guidelines, professional standards and policies (as required).

## **SECTION VI. AWARD OF CONTRACT, RESERVATION OF RIGHTS**

### **NUMBER OF CONTRACTS.**

COE reserves the right to award one, more than one or no contract(s) in response to this RFP.

### **ADVANTAGEOUS CONTRACT.**

The Contract, if awarded, will be awarded to the PROPOSER(s) whose Submittal(s) is/are deemed most advantageous to COE, in comportment with Texas Professional Services Procurement Act requirements, and as determined by the selection committee, upon approval of COE Council.

### **FINAL SELECTION AND COE COUNCIL APPROVAL.**

COE may accept any Submittal in whole or in part. If subsequent negotiations are conducted, they shall not constitute a rejection or alternate RFP on the part of COE. However, final selection of a PROPOSER is subject to COE Council approval.

### **REMEDY OF TECHNICAL ERRORS.**

COE reserves the right to accept one or more submittals or reject any or all submittals received in response to this RFP, and to waive informalities and irregularities in the submittals received. COE also reserves the right to terminate this RFP, and reissue a subsequent solicitation, and/or remedy technical errors in the RFP process.

#### **PREPARATION COSTS.**

This RFP does not commit COE to enter into a Contract, award any services related to this RFP, nor does it obligate COE to pay any costs incurred in preparation or submission of a submittal or in anticipation of a contract.

#### **INSURANCE AND INDEMNITY.**

If selected, PROPOSER will be required to comply with the Insurance and Indemnity Requirements established herein or as prescribed by law.

#### **INDEPENDENT CONTRACTOR.**

PROPOSER agrees and understands that, if selected, it and all persons designated by it to provide services in connection with a contract, is (are) and shall be deemed to be (an) independent contractor(s), responsible for its (their) respective acts or omissions, and that COE shall in no way be responsible for PROPOSER's actions, and that none of the parties hereto will have authority to bind the other or to hold out to third parties.

#### **PURCHASE ORDERS.**

As Needed. Execution of a contract does not obligate COE to engage any delivery orders, Purchase Orders, or other commitments for services. Service delivery shall be at COE's discretion, as needed, and will be communicated to the PROPOSER through individual Purchase Orders.

### ***SECTION VII. GENERAL CONTRACT TERMS AND CONDITIONS***

#### **CONTRACT**

This proposal, submitted documents, and any negotiations, when properly accepted by COE, shall constitute a contract equally binding between the successful Proposer and COE. No different or additional terms will become a part of this contract with the exception of a Change Order.

The award of the contract shall be made to the responsible Proposer whose proposal is determined to be the lowest evaluated offer resulting from negotiations, taking into consideration the relative importance of price and other factors set forth in the Request for Proposals in accordance with the Texas Local Government Code, Chapter 262.

Negotiations may be conducted with responsible bidders who submit proposals determined to be reasonably susceptible of being selected for award. All bidders will be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. Revisions to proposals may be permitted after submission and before award for the purpose of obtaining best and final offers.

#### **CONFLICT OF INTEREST**

No public official shall have any interest in this contract, except as permitted by and subject to the disclosure requirements of Vernon's Texas Codes Annotated, Local Government Code, Title 5, Subtitled C, Chapter 171.

#### **CONFIDENTIALITY**

All information disclosed by COE to successful Proposer for the purpose of the work to be done or information that comes to the attention of the successful Proposer during the course of performing such work is to be kept strictly confidential.

### **ADDENDA**

Any interpretations, corrections or changes to this RFP will be made by written addenda. Sole issuing authority of addenda shall be vested in COE Purchasing. Addenda will be mailed to all who are known to have received a copy of this Request for Proposal. Proposers shall acknowledge receipt of all addenda.

### **CHANGE ORDERS**

No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change orders to the contract will be made in writing by the COE Purchasing.

### **ASSIGNMENT**

The successful Proposer shall not sell, assign, transfer or convey any contract resulting from this RFP, in whole or in part, without the prior written consent of COE Council.

### **VENUE**

This agreement will be governed and venue construed according to the laws of the State of Texas, County of Hidalgo. This agreement is fully performable in Edinburg, Texas.

### **SUBMITTAL OF CONFIDENTIAL MATERIAL**

Any material that is to be considered as confidential in nature must be clearly marked as such by the Proposer and will be treated as confidential by COE.

### **MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE PROPOSERS:**

A prospective Proposer must meet the following requirements:

A prospective Proposer must affirmatively demonstrate their responsibility; have adequate financial resources, or the ability to obtain such resources as required; be able to comply with the required or proposed delivery schedule; Have a satisfactory record of performance; have a satisfactory record of integrity and ethics; be otherwise qualified and eligible to receive an award.

COE may request representation and other information sufficient to determine Proposer's ability to meet these minimum standards listed above.

### **SUCCESSFUL PROPOSER SHALL**

Successful Proposer shall defend, indemnify and save harmless COE and all its officers, agents and employees from all suits, actions, or other claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of any negligent act or fault of the successful Proposer, or of any agent, employee, subcontractor or supplier in the execution of, or performance under, any contract which may result from proposal award. Successful Proposer shall pay any judgment and cost of litigation which may be obtained against COE growing out of such injury or damages.

## **PRIME CONTRACTOR RESPONSIBILITIES**

The selected Proposer shall be required to assume responsibility for all items and services offered in his proposal whether or not he produces or provides them. The COE shall consider the selected Proposer to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

## **USE OF SUBCONTRACTORS**

Each Contractor shall serve as the single prime contractor for all work performed pursuant to its contract. That prime contractor shall be responsible for all deliverables referenced in this RFP. This general requirement notwithstanding, Proposers may enter into subcontractor arrangements. Proposers may submit a proposal in response to this RFP, which identifies subcontract(s) with others, provided that the prime contractor acknowledges total responsibility for the entire contract.

If it becomes necessary for the prime contractor to use subcontractors, the COE urges the prime contractor to use Texas/ City of Edinburg vendors, including small and emerging businesses, if practical. In all events, any subcontractor used by the prime should be identified to the COE Project Manager.

Information required of the prime contractor under the terms of this RFP, is also required for each subcontractor and the subcontractors must agree to be bound by the terms of the contract. The prime contractor shall assume total responsibility for compliance.

## **INSURANCE REQUIREMENTS**

Contractor shall furnish the COE with certificates of insurance effecting coverage(s) required by the RFP (see Attachment III–Insurance). The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be received and must be approved by the COE before work commences. The COE reserves the right to require complete certified copies of all required policies, at any time.

## **SUBCONTRACTOR INSURANCE**

The Contractor shall include all subcontractors and COE as additionally insured under its policies or shall insure that all subcontractors satisfy the same insurance requirements Stated herein for the contractor.

## **PROPOSALS/PROPOSERS MUST COMPLY WITH:**

All federal, state, county and local laws governing or covering this type of service.

## **ERRORS AND OMISSIONS IN PROPOSAL**

The COE will not be liable for any error in the proposal. Proposer will not be allowed to alter proposal documents after the deadline for proposal submission, except under the following condition: The COE reserves the right to make corrections or clarifications due to patent errors identified in proposals by the COE or the Proposer. The COE, at its option, has the right to request clarification or additional information from the Proposer.

## **TERMINATION OF CONTRACT**

This contract shall remain in effect until contract expires, completion and acceptance of services or default. COE reserves the right to terminate the contract immediately in the event the successful Proposer fails to:

- meet delivery or completion schedules or
- otherwise perform in accordance with the accepted proposal or
- File for Bankruptcy.

Breach of contract or default authorizes COE to award to another Proposer, purchase elsewhere and charge the full increase cost to the defaulting Proposer.

Either party may terminate this contract with a thirty (30) days' written notice prior to the either party stating cancellation. The successful Proposer must state therein the reasons for such cancellation. Prior written notice must be delivered in person or sent by registered or certified mail, return receipt requested, proper postage paid, and properly addressed to the other party at the address on the affidavit for the contractor or to COE MANAGER, 415 West University Drive Edinburg, Texas.

### **PERFORMANCE OF CONTRACT**

COE reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of COE in the event of breach or default or resulting contract award.

### **NO GUARANTEE OF QUANTITIES**

The COE reserves the right to increase or decrease the amount, at the unit prices stated in the proposal.

Neither the COE nor any Agency obligates itself to contract for or accept more than their actual requirements during the period of this agreement, as determined by actual needs and availability of appropriated funds.

### **PURCHASE ORDER**

A purchase order(s) shall be generated by COE to the successful Proposer.

### **INVOICES**

The invoices shall show:

- Name and address of successful Proposer;
- Detailed breakdown of all charges for the services or products delivered stating any applicable period of time;
- COE Purchase Order Number.
- Invoices shall be based upon actual services rendered and actual hours of performance and/or products delivered.

### **PAYMENT**

Payment will be made upon receipt and acceptance by COE of all completed services and/or products ordered and receipt of a valid invoice, in accordance with the Texas Government Code, Chapter 2251. Successful Proposer is required to pay subcontractors within the time period established by COE.

### **OWNERSHIP**

All plans, prints, designs, concepts, etc., shall become the property of COE.

### **FUNDING**

Funds for payment have been provided through COE budget approved by the Edinburg COE Council for this fiscal year only. State of Texas statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Therefore, anticipated orders or other obligations that may arise past the end of the current COE fiscal year shall be subject to budget approval.



## **FINDINGS CONFIDENTIAL**

All of the information, reports, cost estimates, plans, specifications and documents prepared or assembled by the CONTRACTOR under the pursuant contract are the property of the CITY. The CONTRACTOR agrees that any such documents shall not be made available to any individual or organization other than the appropriate CITY officials without prior written approval of the CITY. Nothing contained in this paragraph shall be construed to prevent the CONTRACTOR from making information, reports and documents available to those individuals or firms directly concerned with the project involved with prior written consent of the CITY.

## **RECORDS RETENTION AND REVIEW**

The CONTRACTOR shall retain all records pertaining to the services and the contract for these services and make them available to the CITY for a period of three (3) years following notification by the CITY in writing that a Federal Emergency Management Agency, Public Assistance final status report (project close-out report) has been issued by Texas Department of Emergency Management. (Note to Purchasing; FEMA requirement)

## **WRITTEN TASK ORDERS**

The CITY shall issue an official written Task Order for the services referenced in the contract. The Task Order shall be sent via facsimile or email followed by regular mail. Under no circumstances shall the CITY be liable for any services rendered unless the written Task Order has been sent and received by the CONTRACTOR. CONTRACTOR must acknowledge receipt of the written Task Order. The City makes not guarantee as to the estimated quantities listed in the Price Schedule. The Contractor may be tasked to perform only specific line items at specified quantities below or above the estimate quantity.

## **PROPOSER'S CERTIFICATION OF OMB A-133 COMPLIANCE**

Certification of no suspension or debarment. By signing and submitting any proposal for \$100,000 or more, the proposer certifies that their company, any subcontractors, or principals are not suspended or debarred by the General Services Administration (GSA) in accordance with the requirements in OMB Circular A-133.

A list of parties who have been suspended or debarred can be viewed via the internet at <http://www.epls.gov>

## **NUMBER OF COPIES TO BE SUBMITTED:**

COE requires one (1) original submittal and Five (5) copies.

**ATTACHMENT I - FINANCIAL PROPOSAL**

I have read and understand the requirements of this proposal, **RFP# 2022-** , and agree to provide the required services in accordance with this proposal and all attachments, exhibits etc. I agree to furnish the services as described in RFP except where specific exception has been taken.

The hourly labor rates shall include all applicable overhead and profit.

**POSITIONS HOURLY RATES**

Project Manager	\$_____
Operations Managers	\$_____
GIS Analyst	\$_____
Field Supervisors	\$_____
Debris Site/Tower Monitors	\$_____
Load Ticket Data Entry Clerks	\$_____
Billing/Invoice Analysts	\$_____
Project Assistants	\$_____
Field Coordinators (Crew Monitors)	\$_____
Rental of Equipment	\$_____

**OTHER REQUIRED POSITIONS:**

Proposer may include other positions, with hourly rates, as needed.

**Positions:**

**Hourly Rates:**

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**ATTACHMENT II – RFP EVALUATION FORM**

RFP EVALUATION FORM				
SELECTION CRITERIA	RIF RANGE	RIF MAX		EVALUATORS SCORE
<b>PROPOSER'S QUALIFICATIONS/EXPERIENCE</b> Contractor's ability to be there on time with the resources needed Including, but not limited to, i) Quantity, quality, and availability of management personnel, equipment and labor resources, ii) experience providing equal or greater level of services under the same or similar circumstances, and iii) demonstrates skills in their experience managing debris monitoring	0-20	20	=	
<b>PROPOSER'S ITEMIZED AND TOTAL PROPOSED PRICING</b> Including, but not limited to, Contractor's creditworthiness and willingness to provide performance guarantees.	20-60	60	=	
<b>TECHNICAL PROPOSAL EVALUATION</b> Confidence in approach and methodology, Contractor's ability, commitment, understanding of the project and familiarity with rules and regulations and the ability pre-plan, stage, and monitor the work, and its experience in handling accounting, reports, briefings and reimbursements	0-20	20	=	
<b>TOTAL</b>		100	=	
<b>PROPOSER:</b>				
<b>EVALUATER</b>				

\* The Relative Importance Factor (RIF) is the relative importance (or weight) of each criterion as it relates to the particular project, and must be within the specified acceptable range. The RIF is expressed as a percentage of the total importance of the project and always totals 100%.

**INSURANCE REQUIREMENTS**

The Bidder awarded the contract shall furnish proof of insurance, which will also include any subcontractor that is subcontracted by the bidder in at least the following limits, to be in place prior to providing any services under this Contract and to continue in effect at all times during the term of this Contract:

1. Professional liability insurance policy with limits of at least One Million Dollars (\$1,000,000) per occurrence, or limited to claims made, include at least a five (5) year extended reporting period.
2. Automobile liability insurance policy with limits of at least Three Hundred Thousand Dollars (\$300,000) per person and \$500,000 per occurrence consistent with potential exposure to COE under the Texas Tort Claims Act. Coverage should include injury to or death of persons and property damage claims (with limits up to \$500,000) arising out of the services provided to COE hereunder.
3. Uninsured/Underinsured motorist coverage in an amount equal to the bodily injury limits set forth immediately above;
4. A Five Hundred Thousand Dollar (\$500,000) Comprehensive General Liability insurance policy providing additional coverage to all underlying liabilities of COE consistent with potential exposure of COE under the Texas Tort Claims Act;
5. Workers' compensation insurance in amounts established by Texas law, unless the Bidder is specifically exempted from the Texas Workers' Compensation Act, Texas Labor Code Chapter 401, et. seq.

Certificates of insurance naming COE as an additional insured shall be submitted to COE for approval prior to any services being performed by Contractor. Each policy of insurance required hereunder shall extend for a period equivalent to, or longer than the term of the Contract, and any insurer hereunder shall be required to give at least thirty (30) days written notice to COE prior to the cancellation of any such coverage on the termination date, or otherwise. This Contract shall be automatically suspended upon the cancellation, or other termination, of any required policy of insurance hereunder, and such suspension shall continue until evidence that adequate replacement coverage is provided to COE. If replacement coverage is not provided within thirty (30) days following suspension of the Contract, the Contract shall automatically terminate.

**ATTACHMENT IV – INSURANCE REQUIREMENTS ACKNOWLEDGEMENT**

I, \_\_\_\_\_, authorized representative for \_\_\_\_\_, Hereby acknowledge the  
(Company/Vendor)  
receipt of COE's required insurance limits. Said requirements:

Will be acquired within 10 working days after notification from the Department of Solid Waste Management of bid awarded by City of Edinburg; (\*An insurance certificate for the required insurance limits shall be provided to the Solid Waste Management Director in order to qualify for award of bid and to execute a contract between the Company and COE.)

Will acquire additional amount needed to meet COE's requirements within 10 working days after notification from the Department of Solid Waste Management of bid awarded by COE of Edinburg; currently carry the following:

Professional Liability (Errors & Omissions): \$ \_\_\_\_\_

Automobile Liability: \$ \_\_\_\_\_ General Liability: \$ \_\_\_\_\_

(\* An insurance certificate for the required insurance limits shall be provided to the Solid Waste Management Director in order to qualify for award of bid and to execute a contract between the Company and COE.) OR

Have already been met (see attached copy of insurance certificate).

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Date

Notice to Bidder: Failure to provide Certificates of Insurance to the Solid Waste Management Director will cause the bid award to be rescinded and then awarded to next lowest bidder. Certificates of Insurance will be monitored/verified on a quarterly basis to ensure that coverage policy is in place. It is the Company's obligation to maintain the appropriate insurance coverage throughout the term of the contract.



## ATTACHMENT V – PROJECT REQUIREMENTS ACKNOWLEDGEMENT

This is to certify that I, \_\_\_\_\_, possess all of the APPLICABLE:

1. Licenses: \_\_\_\_\_
2. Bonds: \_\_\_\_\_
3. Certificates: \_\_\_\_\_
4. Permits: \_\_\_\_\_
5. Other: \_\_\_\_\_

necessary to carry out the required project. Furthermore, I am providing copies of the required documentation, so that if my company is awarded the bid, I may be eligible to enter a contract with COE and proceed to complete the project in a timely manner.

\* Any license, bonds, certificates, permits, etc. which are required must be presented as part of the bid packet in order to expedite the bid evaluation process. Failure to provide said documentation will result in the disqualification of your bid.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
CITY, State, Zip

**LITIGATION DISCLOSURE FORM**

**Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your submittal from consideration or termination of the contract, once awarded.**

Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Circle One                      YES                      NO

Have you or any member of your Firm or Team to be assigned to this engagement ever been terminated (for cause or otherwise) from any work being performed for the COE or any other Federal, State or Local Government, or Private Entity?

Circle One                      YES                      NO

Have you or any member of your Firm or Team to be assigned to this engagement ever been involved in any claim or litigation with COE or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Circle One                      YES                      NO

**If you have answered “Yes” to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your submittal.**

**PROPOSER QUALIFICATIONS - GENERAL QUESTIONNAIRE**

Name/Name of Agency/Company: \_\_\_\_\_

(full, correct legal name)

Address: \_\_\_\_\_

Telephone/Fax: \_\_\_\_\_

1. Does your Company anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months that may affect the organization's ability to carry out its submittal? Yes\_\_\_\_ No\_\_\_\_
2. Is your Company authorized and/or licensed to do business in Texas? Yes\_\_\_\_ No\_\_\_\_
3. Where is the Company's corporate headquarters located? \_\_\_\_\_
4. Does the Company have an office located in Edinburg, Texas? Yes\_\_\_\_ No\_\_\_\_ If the answer to the previous question is "yes", how long has the Company conducted business from its Edinburg office?\_\_\_\_ (years) \_\_\_\_ (months)
5. State the number of full-time employees at the Edinburg office. \_\_\_\_\_
6. If the Company does not have a Edinburg office, does the Company have an office located in Hidalgo County, Texas? Yes\_\_\_\_ No\_\_\_\_ If the answer to the previous question is yes, how long has the Company conducted business from its Hidalgo County office?\_\_\_\_ (years) \_\_\_\_ (months)
7. State the number of full-time employees at the Hidalgo County office. \_\_\_\_\_
8. Has the Company or any of its principals been debarred or suspended from contracting with any public entity? Yes\_\_\_\_ No\_\_\_\_
9. If yes, identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
10. Indicate person whom COE may contact concerning your submittal or setting dates for meetings.  
  
Name: \_\_\_\_\_  
  
Address: \_\_\_\_\_  
  
Telephone: \_\_\_\_\_  
  
Fax: \_\_\_\_\_  
  
Email: \_\_\_\_\_
11. Surety Information  
  
Have you or the Company ever had a bond or surety instrument "called," canceled, or forfeited? Yes ( ) No ( ).

If yes, state the name of the bonding company, date, amount of bond and reason for such bond being "called," or its cancellation or forfeiture. \_\_\_\_\_

12. Bankruptcy Information

Have you or the Company ever been declared bankrupt or filed for protection from creditors under state or federal proceedings?

Yes ( ) No ( )

If yes, state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets. \_\_\_\_\_

13. Provide any other names under which your business has operated within the last 10 years.

**For vendor or other person doing business with local governmental entity:**

This questionnaire must be filed in accordance with chapter 176 of the Local Government Code by a person doing business with the governmental entity.

By law this questionnaire must be filed with the records administrator (City Secretary's Office) of the local government no later than the 7th business day after the date the 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.

The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than September 1 of the year for which an activity described in Section 176.006(a), Local Government Code, is pending and not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.

Please review this entire document, if for any reason there is any information to disclose, relative to any questions in this Conflict of Interest form, you must file with City Secretary's Office subject to above instructions.

THIS FORM CAN BE DOWNLOADED FROM AND A COPY MUST ACCOMPANY THE RFP:  
<http://www.ethics.state.tx.us/forms/CIQ.pdf>

**You must sign below in INK; failure to sign WILL disqualify the offer. All prices must be typewritten or written in ink.**

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Historically Underutilized Business (State of Texas) Certification VID Number: \_\_\_\_\_

Telephone No. \_\_\_\_\_ FaxNo. \_\_\_\_\_ e-mail \_\_\_\_\_

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_

**By signing the attachment and/or the proposal, the proposer certifies compliance with the signature authority required in accordance with state and/or local law. The person signing the proposal must be:**

**A current corporate officer, partnership member, or other individual specifically authorized to submit a proposal as reflected in the appropriate records on file with the City Secretary's Office; or an individual authorized to bind the company as reflected by a corporate resolution, certificate or affidavit; or other documents indicating authority which are acceptable to the COE.**

STATE OF TEXAS           §  
COUNTY OF HIDALGO   §  
CITY OF EDINBURG       §

AGREEMENT BETWEEN THE CITY OF  
EDINBURG AND **CONTRACTOR** FOR DEBRIS  
MONITORING AND RECOVERY PLANNING  
SERVICES FOR THE CITY OF EDINBURG

The City of Edinburg, Hidalgo County, Texas, a municipal corporation, (hereinafter “**City**”) and **CONTRACTOR** (hereinafter “**Contractor**”), are the parties to this Agreement.

### **RECITALS**

**WHEREAS**, the City desires to engage the Contractor for debris monitoring and recovery planning services for the City of Edinburg and to provide all labor, materials and equipment necessary to perform work as described in Exhibit A, and

**WHEREAS**, Contractor has the professional knowledge, ability, equipment, and personnel to properly provide services needed by the City; and

**WHEREAS**, the Contractor will comply with all applicable federal regulations from Title 2 Code of Federal Regulations Part 200 Appendix II; and

**WHEREAS**, City desires to engage Contractor to render services in connection therewith:

**NOW, THEREFORE**, City and Contractor do mutually agree as follows:

### **SECTION I** **EMPLOYMENT OF CONTRACTOR**

A. City agrees to employ Contractor to furnish and provide services, labor, materials, and equipment (“Services”) as stated in this agreement and **Exhibit “A”**. Upon receipt of Services to the City’s satisfaction, the City agrees to pay Contractor as stated in this Agreement.

### **SECTION II** **SERVICES OF CONTRACTOR**

A. The Contractor shall, in the scope of his work, perform the Services identified in **Exhibit “A”** of this document. City shall provide Contractor with authorization to proceed, after execution of this Agreement.

B. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party as an agent of the other for any purpose

whatsoever. Except as otherwise specifically provided herein, neither party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

### **SECTION III** **RESPONSIBILITY OF THE CITY**

A. City will facilitate Contractor's work with the following tasks:

1. Provide Contractor with its requirements for the Services.
2. Assist Contractor by providing information reasonably available to the City and pertinent to the Services.
3. Facilitate access to and make provisions for Contractor to enter upon public property as reasonably required for Contractor to perform its Services.
4. Examine all reports, sketches, estimates, drawings, proposals, and other documents presented by Contractor and render in writing decisions pertaining thereto within a reasonable time so as not to delay the Services of the Contractor.
5. Give prompt written notice to Contractor whenever City observes or otherwise becomes aware of any defect in Services.
6. Direct Contractor, if necessary, to provide or to subcontract Additional Services by written authorization.

### **SECTION IV** **RESPONSIBILITIES OF CONTRACTOR**

A. Contractor shall perform the Services described in **Exhibits "A"**.

B. Contractor shall perform its Services (including the furnishing of labor, materials, and equipment) with care, skill, and diligence, in accordance with the applicable professional standards currently recognized by its profession, and shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all reports, plans, information, and other items and Services furnished under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, ordinances, codes, and regulations in performing the Services. If Contractor fails to meet applicable professional standards, Contractor shall without additional compensation correct or revise any errors or deficiencies, with or without request to do so by the City.

C. Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of Services furnished by Contractor under this Agreement. Contractor shall keep the City informed of the Services performed under this Agreement. In connection with the performance of the Services by Contractor, Contractor agrees to promptly and fully disclose to City any information regarding the Services as City may request.

D. Contractor will develop and maintain a detailed schedule for completion of the Services. The schedule will be a work plan showing activities to be performed and their sequence; and, in



addition, activities will contain duration, manpower required, and estimated cost. A preliminary schedule shall be submitted to the City within ten (10) days after execution of this Agreement for review and establishment of the level of detail to be included.

E. Contractor will submit monthly progress data for the reporting period which will include the percentage complete and actual start date and actual finish date for all activities worked on by the Contractor during the period. Any changes in delivery dates will be reported. Other information, such as actual hours expended, will be furnished monthly, or as requested, by the City. If requested by the City, schedule update meetings will be held to discuss the results of schedule analysis and necessary action to meet the requirements of the schedule.

F. Contractor shall perform Services necessary to accomplish the work specified in this Agreement, in accordance with this Agreement.

G. City's review or approval of reports, and other services furnished hereunder shall not in any way relieve Contractor of responsibility for the technical adequacy of the work. Neither City's review, approval, or acceptance of, nor payment for any of the Services shall be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

H. Contractor shall be and shall remain liable, in accordance with applicable law, for all damages to City caused by Contractor's negligent performance of any of the Services furnished under this Agreement. Contractor shall not be responsible for any time-delays in the project caused by circumstances beyond Contractor's control.

I. Contractor's obligations under this clause are in addition to the Contractor's other expressed or implied obligations under this Agreement or state law and in no way diminish any other rights that City may have against Contractor for Contractor's errors or omissions.

J. All reports, drawings, plans, and other documentation pertaining to the Services become the property of City.

## **SECTION V**

### **PAYMENT AND FEES**

City agrees to pay Contractor for Services being contracted herein as follows:

A. City hereby agrees to pay services to be performed under this Agreement pursuant to the proposal in Exhibit A; any cost savings realized from the performance and completion of the task orders and acceptance by the city, shall revert to the City by the Contractor.

B. Contractor shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Contractor shall not bill City for duplicate services performed by more than one person. Contractor and City acknowledge and agree that compensation paid by City to Contractor under this Agreement is based upon Contractor's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Contractor. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Contractor and its

employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

C. City is entitled to impose a set-off against payment based on any of the following:

- a. Claims have been made against City based on Contractor's conduct in the performance or furnishing of Services, or City has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of Services, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, and non-compliance with Laws and Regulations;
- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with Services and related work;
- c. Contractor has failed to provide and maintain required insurance;
- d. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
- e. Any Services are defective, requiring correction or replacement;
- f. City has been required to correct defective Services or has accepted defective Services;
- g. Liens have been filed in connection with the Services; or
- h. Other items entitle City to a set-off against the payment amount.

D. If City imposes any set-off against payment, City will give Contractor immediate written notice stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. City shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by City and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits written notice contesting the reduction within 30 days of receiving City's written notice.

E. All fees payable to Contractor under this Agreement shall be made in full, and without any withholding, deduction, or offset of any state or federal withholding taxes, FICA, SDI, or income taxes, nor shall the City be obligated to pay any of Contractor's employees' taxes. Contractor hereby covenants and agrees that it shall be solely responsible for all taxes, withholding, FICA, SDI, and other similar items (both employee and employer portions) with respect to all fees paid by the City under this Agreement, and agrees to indemnify and hold the City harmless with respect to such taxes and withholding.

F. Contractor and its employees shall not be eligible for, participate in, or be entitled to compensation in lieu of any insurance, benefit, retirement, or other plan or program provided by the City to its employees.

G. Contractor shall provide an invoice in accordance with City regulations. Payment terms shall be net thirty (30) days from receipt of invoice.

H. The City may, at any time, request Contractor to make changes within the scope of the Services or to perform extra work. If any request by the City for a change or extra work causes an increase or decrease in the cost or the time required for performance of the work, or any change to this Agreement, Contractor shall, within seven (7) days from the date it receives the City's request, submit in writing a proposal for accomplishing such changed or extra work. This proposal shall define, if applicable, any increase or decrease in cost or time of completion or other change to this Agreement. The governing body of the City must approve any change orders, pursuant to the City's Code of ordinances and policies and procedures and any other applicable laws of this State, before making the changes. The City will not be liable for any costs incurred by Contractor from performance of a change or extra work prior to issuance of a change order to this Agreement.

I. The total contract price may not be increased because of the changes unless additional money for increased costs is appropriated for that purpose from available funds or is provided for by the authorization of the issuance of time warrants.

J. Prior to and as a condition of final payment to the Contractor following termination or expiration of this Agreement as defined below, the Contractor shall deliver to the City a release in form and substance satisfactory to the City, discharging it and its officers, agents, and employees of all liabilities, obligations, and claims arising out of this Agreement and the performance thereof.

## **SECTION VI**

### **TERM OF AGREEMENT**

A. Contractor contracts and agrees to provide services in accordance with **Exhibit A**, and as specified by the City. The initial term of the contract shall be from the date of execution of this Agreement through September 30, 2023. The City may, in its sole discretion, determine to extend this agreement for two additional one-year terms. If the City approves such extension, it will provide written confirmation to Vendor.

B. City may terminate this Agreement upon giving 10 days' prior written notice thereof to Contractor. In addition, City shall have the right, upon written notice, to cancel this Agreement immediately if, in the City's sole judgment, the Services rendered by Contractor breach or violate any of the provisions of this Agreement.

C. Upon termination or completion of this Agreement, City shall have no liability to Contractor except for charges for Services performed by Contractor and accepted by the City prior to receipt of notice of termination or cancellation. The terms and conditions in this Agreement that by their sense and context are intended to survive the performance hereof by either or both parties hereunder shall so survive the termination, cancellation, or completion of performance of this Agreement.

D. Upon termination or completion of Contractor's Services hereunder or at such other time as may be requested by City, Contractor shall return to City within seven (7) days of termination,

completion, or request all documents, records, notebooks, including copies thereof, whether prepared by Contractor or others, in Contractor's possession and related to the Services.

E. The City reserves the right to suspend work on the Services, with or without cause, in whole or in part, upon giving notice to Contractor. Contractor shall resume the Services so suspended when directed to do so by the City. The City shall have no liability to Contractor except for charges for Services performed by Contractor and accepted by the City prior to receipt of notice of suspension of Services. If only a portion of the Services are suspended, Contractor shall be compensated only for Services of which are not suspended and are actually performed during such suspension.

F. Upon termination of this Agreement or suspension of Services under this Section, the City may take over the work and may obtain the services of another entity to complete the work under this Agreement.

## **SECTION VII** **MINIMUM INSURANCE REQUIREMENTS**

Contractor shall be adequately insured and carry liability, workers compensation, automobile insurance and professional liability for injury to its employees and others incurring loss or injury as a result of the acts of Contractor or its employees. In accordance with City ordinances, Contractor shall be required to hold the following minimum insurance coverage throughout the duration of this agreement:

- A. Workers Compensation  
In accordance with State statute.
- B. Comprehensive General Liability
  - 1. Bodily Injury
    - \$250,000 each person
    - \$500,000 each occurrence
  - 2. Property Damage
    - \$100,000 each occurrence
    - \$100,000 each aggregate

or \$500,000 combined single limits
- C. Comprehensive Auto Liability
  - 1. Bodily Injury
    - \$100,000 each person
    - \$500,000 each occurrence
  - 2. Property Damage
    - \$100,000 each occurrence
    - \$100,000 aggregate

or \$500,000 combined single limits
- D. City's Protective Liability

1. Bodily Injury  
\$250,000 each person  
\$500,000 each occurrence
2. Property Damage  
\$100,000 each occurrence  
\$100,000 each aggregate  
  
or \$500,000 combined single limits

E. Professional Liability

1. Professional  
\$1,000,000 per claim and in the aggregate

F. Evidence of the above insurance coverage is attached as Exhibit "B" and the City of Edinburg shall be listed as an additional insured.

G. If at any time and for any reason Contractor fails to provide, maintain, keep in force and effect, or deliver to the City proof of, any of the insurance required and such failure continues for ten (10) days after Notice thereof from City to Contractor, City may, but shall have no obligation to, procure single interest insurance for such risks covering City (or, if no more expensive, the insurance required by this Agreement), and Contractor shall, within ten (10) days following City's demand and Notice, pay and reimburse City therefor with interest at Prime Rate plus 2%, the Prime Rate being that in place on the date of Notice, from the date of payment by the City until repayment of City in full by Contractor.

H. With respect to each and every one of the insurance policies required to be obtained, kept, or maintained under the terms of this Agreement, on or before the date on which each such policy is required to be first obtained and at least fifteen (15) days before the expiration of any policy required hereunder previously obtained, Contractor shall deliver evidence reasonably acceptable to City showing that such insurance is in full force and effect.

I. Contractor hereby agrees as follows:

1. To punctually pay or cause to be paid all premiums and other sums payable under each insurance policy required to be obtained, kept, and maintained pursuant to this Agreement;
2. To maintain in full force and effect the policies required to be carried to the extent so required to be carried pursuant to the terms hereof;
3. To ensure that all Casualty Proceeds are paid to the Party entitled to receive same;
4. Not, at any time, to take any action (or omit to take action) which action (or omission) would cause any insurance policies required to be obtained, kept, and maintained under this Agreement to become void, voidable, unenforceable, suspended, or impaired in whole or in part

or which would otherwise cause any sum paid out under any such insurance policy to become repayable in whole or in part; and

5. Promptly deliver Notice to City of any facts or circumstances of which it is aware which, if not disclosed to its insurers or re-insurers, is likely to affect adversely the nature or extent of the coverage to be provided under any insurance policy required hereunder.

## **SECTION VIII**

### **AUDIT, ACCESS TO RECORDS AND RECORDS RETENTION**

A. The Contractor shall maintain books, records, documents and other evidence directly pertinent to the performance of work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied, and applicable state and federal regulations in effect on the date of execution of this Agreement. The Contractor shall also maintain the financial information and data used by the Contractor in the preparation of support the cost submission required under applicable state and federal regulations in effect on the date of execution. The State and the City, or any of their duly authorized representatives shall have access to such project related books, records, documents, and other evidence for inspection, audit, and copying during normal business hours. The Contractor will provide proper facilities for such access and inspection.

B. Audits conducted under this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agencies.

C. Records under paragraph A above shall be maintained and made available by the Contractor during performance of services under this Agreement and for three (3) years from the date of final state assistance payment to the Contractor for the project. In addition, those records which relate to any controversy arising under this Agreement, litigation, the settlement of claims arising out of performance or to costs or items to which an audit exception has been taken shall be maintained and made available by the Contractor until three (3) years after the date of resolution of such appeal, litigation, claim or exception.

D. This right of access clause applies to financial records pertaining to all agreements related to any project (except formally advertised, competitively awarded, fixed price agreements) and all amendments regardless of the type of agreement. In addition, this right of access applies to all records pertaining to all agreement amendments:

1. to the extent the records pertain directly to Agreement performance; or
2. if there is any indication that fraud, gross abuse or corrupt practices may be involved; or
3. if the Agreement is terminated for default or for convenience.

## **SECTION IX**

### **COMPLIANCE STANDARDS**

The Contractor agrees to comply with the following Executive Orders, Titles, and Program Regulations issued under Federal or State law while performing work under this contract. The

Contractor also agrees to endeavor to assure that its subconsultants and subcontractors comply with these requirements.

1. Title VI of the Civil Rights Act - requires that no one may be denied access to benefits from projects which receive federal assistance.
2. Section 109 of the Housing and Community Development Act of 1974 - Nondiscrimination related to benefits from projects funded specifically under Title I of the Act.
3. Section 3 of the HUD Act of 1968 - requires that maximum effort be made to provide employment, training, and business opportunities to low income families and/or residents of the project area.
4. The Contractor shall give the United States Department of Housing and Urban Development, the Inspector General, the Comptroller General of the United States, the Auditor of the State of Texas, access to and the right to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by the Contractor pertaining to this Agreement. Such rights to access shall continue as long as the records are retained by the Contractor. Contractor agrees to maintain such records in an accessible location for a period of three (3) years.
5. Executive Order 11246 (paragraph a - c for contracts under \$10,000; paragraphs a - g for contracts over \$10,000) - Equal Employment Opportunity.
6. Executive Order 11246. Executive Order 11246 and the regulations issued pursuant thereto (24 CFR Part 130) which provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of federal or federally assisted contracts. Such consultants or subcontractors shall take affirmative action to ensure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination rates of pay or other forms of compensation and selection for training and apprenticeship.
7. Equal Employment Opportunity for Activities and Contract not Subject to Executive Order 11246, as amended. In carrying out the program, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor shall take affirmative action to ensure that applicants for employment 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 limited to the following: employment, upgrading, demotion, or transfer; recruitment or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this paragraph in all of its contracts for program work and will require all of its consultants for such work to incorporate such requirements in all subcontracts for program.

**SECTION X**  
**DEBARMENT PROHIBITION**

The Contractor agrees, that at the time of execution of this Agreement that neither the Contractor nor any of its subcontractors are named on the master lists of debarment, suspensions, and voluntary exclusions/40 CFR PT 32 (Master List) and that it will not make any subagreement awards to any entity that is named on the Master List.

**SECTION XI**  
**ALTERNATE DISPUTE RESOLUTION/NEUTRAL PARTY**

A. If any dispute, controversy, or claim between or among the Parties arises under this Agreement or is related in any way to this Agreement or the relationship of the Parties hereunder (a "Dispute"), the Parties shall first attempt in good faith to settle and resolve such Dispute by meeting at a mutually agreeable time and place to discuss the Dispute within seven (7) days following the original written notice of any Dispute by the party making such a claim. The Parties shall seek to resolve the Dispute in writing within fourteen (14) days following the original written notice of any Dispute by the party making such a claim.

B. If a mutual resolution and settlement are not obtained at the meeting, the Parties shall participate in good faith in formal mediation, within thirty (30) days following the original written notice of any Dispute, with a mutually agreeable mediator at a mutually agreeable time and place. No settlement reached under this provision shall be binding on the Parties until reduced to a writing signed by a representative of Contractor and the City Manager. Unless the parties expressly agree otherwise, each party shall bear its own costs and legal and expert fees incurred in the mediation, and evenly share the costs of the mediator. If after proceeding in good faith the parties, with the assistance of a neutral mediator, do not resolve the dispute within forty-five (45) days following the original written notice of any Dispute, the parties may proceed in accordance with Section IX below.

**SECTION XII**  
**CONTROLLING LAW, MANDATORY VENUE, AND FEES AND EXPENSES**

A. After exhausting the procedures set forth above, either party may initiate litigation to resolve the dispute. The Law of the State of Texas shall control the Dispute. Venue is mandatory in State courts located in Hidalgo County, Texas.

B. In the event of any litigation between the parties, the parties shall bear their own costs, including attorneys' fees and costs.

**SECTION XIII**  
**INDEMNIFICATION**

A. To the maximum extent allowed by law, Contractor agrees to and shall indemnify, hold harmless, and defend City, its officers, agents, and employees from any and all claims, losses, causes of action and damages, suits and liability of every kind, including all expenses of litigation, court costs, and attorney's fees arising out of or directly connected with the negligent or willful conduct of Contractor, its agents, officers and employees.



B. Contractor agrees to assist City in defense of claims or litigation brought against the City related to this project, including but not limited to providing written witness statements, documents, and witness testimony upon demand.

#### **SECTION XIV**

#### **LIMITATION OF LIABILITY**

A. Contractor agrees to limit the City's liability arising from City's acts, errors, or omissions such that the total liability of City shall not exceed Contractor's total fees paid by the City to Contractor for the Services rendered pursuant to the Task Order which is the subject matter of the claim. Contractor agrees that City will not be liable for any indirect, incidental, special, or consequential punitive or multiple damages, including without limitation any damages resulting from loss of use, loss of business, loss of revenue, loss of profits, or loss of data, arising in connection with this Agreement, Contractor's performance of Services, or of any other obligations relating to this Agreement, even if City has been advised of the possibility of such damages. The foregoing limitation of liability shall apply to the maximum extent allowed by law for limitation of City's liability, regardless of the cause of action under which such damages are sought.

#### **SECTION XV**

#### **AGREEMENT CONSTRUCTION**

A. The headings of the Sections contained in this Agreement are for reference purposes only, and shall not affect the meaning or interpretation of this Agreement. The parties have been advised by counsel in connection with this Agreement. This Agreement shall be construed and interpreted in accordance with the plain meaning of its language, and not for or against either party, and as a whole, giving effect to all of the terms, conditions, and provisions of this Agreement. Nothing contained in this Agreement shall be deemed to confer any right or benefit on any person who is not a party to this Agreement.

#### **SECTION XVI**

#### **NO PENDING LITIGATION**

A. Contractor represents that there is no action, proceeding, inquiry, or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending to the best knowledge of Contractor threatened against or affecting the Contractor or any subsidiaries of the Contractor, questioning the validity or any action taken or to be taken by the Contractor in connection with the execution, delivery, and performance by the Contractor of this Agreement to which the Contractor may be a party or seeking to prohibit, restrain, or enjoin the execution, delivery, or performance by the Contractor hereof or thereof, where in an unfavorable decision, ruling, or finding (i) would adversely effect the validity or enforceability of, or the authority or ability of the Contractor to perform, its obligations under this Agreement to which the Contractor may be party or (ii) would have an adverse effect on the consolidated financial condition or results of operations of the Contractor or on the ability of the Contractor to conduct its business as presently conducted or as proposed or contemplated to be conducted.

**SECTION XVII**  
**SEVERABILITY**

A. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**SECTION XVIII**  
**NOTICE**

A. Any notices to be given under this Agreement shall be in writing, (i) sent by registered or certified mail, postage prepaid, return receipt requested or (ii) sent by nationally recognized overnight courier (e.g. Federal Express) with electronic tracking, and addressed to such party as follows:

(a) Notices to the City:

City of Edinburg  
415 W. University Drive  
Edinburg, Texas 78539  
Attn.: City Manager

With a copy to:

City of Edinburg  
415 W. University Drive  
Edinburg, Texas 78539  
Attn.: City Attorney

(b) Notices to Contractor:

[address]  
Attn.: [name]

B. Such Notices shall be deemed delivered (i) in the case of U.S. mail in the manner provided above, three (3) business days after posting or (ii) if sent by nationally recognized overnight courier with electronic tracking service, the next business day after depositing same with such overnight courier before the overnight deadline and if deposited with such courier after such deadline, then the next succeeding business day.

**SECTION XIX**  
**NON-APPROPRIATIONS**

A. Notwithstanding anything in the Agreement to the contrary, any and all payments which the City is required to make under this Agreement shall be subject to annual appropriation or other availability of funds, as certified by the Director of Finance.

B. If the City cannot appropriate sufficient funding, then either party has the right to terminate the Agreement by providing ten (10) days' written notice to the other party.

**SECTION XX**  
**SUCCESSORS AND ASSIGNS**

City and Contractor each bind themselves, their partners, successors, executors, administrators, and assigns to the other party of the Agreement in respect to all covenants of this Agreement. Neither City nor Contractor shall assign, sublet, or transfer interest in this Agreement without written consent of the other.

**SECTION XXI**  
**CONFLICT OF TERMS**

If any of the terms of this Agreement conflict in any respect with any of the terms of the attached Exhibits or any current or future Task Orders (including exhibits), the terms of this Agreement shall be controlling.

**SECTION XXII**  
**NO WAIVERS OR ACCORD AND SATISFACTION**

A. This Agreement may be amended only by written instrument signed by all parties.

B. No failure or delay of the City, in any one or more instances (i) in exercising any power, right, or remedy under this Agreement or (ii) in insisting upon the strict performance by Contractor of its covenants, obligations, or agreements under this Agreement, shall operate as a waiver, discharge, or invalidation thereof, nor shall any single or partial exercise of any such right, power, or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power, or remedy or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power, or remedy. The covenants, obligations, and agreements of Contractor and the rights and remedies of the City upon a default shall continue and remain in full force and effect with respect to any subsequent breach, act, or omission.

C. Without limiting the generality of the above, the receipt by City of any Services with knowledge of a breach by Contractor of any covenant, obligation, or agreement under this Agreement shall not be deemed or construed to be a waiver of such breach. No acceptance of Services or payment to Contractor shall be deemed to be other than on account of the earliest installment of the amounts due under this Agreement, nor shall any endorsement or statement on any check, or any letter accompanying any check, wire transfer or other payment, be deemed an accord and satisfaction. City may accept services or make payment without prejudice to its rights under this Agreement or pursue any remedy provided in this Agreement or provided otherwise by law or equity.

EXECUTED by the parties in triplicate originals on this \_\_\_\_ day of \_\_\_\_\_, 2022.

**CITY OF EDINBURG:**

BY: \_\_\_\_\_  
Myra L. Ayala, Interim City Manager  
City of Edinburg  
415 W. University Dr.  
P.O. Box 1079  
Edinburg, Texas 78540  
Phone: (956) 388-8207  
Fax: (956) 383-7111

**ATTEST:**

BY: \_\_\_\_\_  
, Interim City Secretary

**APPROVED AS TO FORM:**

**Omar Ochoa Law Firm, P.C.**

BY: \_\_\_\_\_  
Omar Ochoa  
City Attorney

**CONTRACTOR**

BY: \_\_\_\_\_  
NAME  
TITLE  
STREET ADDRESS  
CITY, STATE ZIP CODE  
Phone:  
Fax:  
Email:

Attachments: Exhibit "A" **Scope of Services and Proposal**  
Exhibit "B" Insurance

**ATTACHMENT XI – SUBMITTAL CHECKLIST****SUBMITTAL CHECKLIST**

This checklist is to help the PROPOSER ensure that all required documents have been included in its submittal.

Document and Location in Submittal	Check or Initial to Indicate Document is Attached to Submittal
*Cover Letter	
*Financial Proposal (Section I in the RFP)	
*Insurance Requirement Acknowledgement(Letter from Insurance Provider and copy of current Insurance Certificate) (Section IV in RFP)	
*Project Requirements Acknowledgement (Section V in RFP)	
*Litigation Disclosure (Section VI in RFP)	
*Proposer Qualifications – General Questionnaire (Section VII in the RFP)	
*Conflict of Interest Questionnaire (Section VIII in the RFP)	
*HB 89 Verification Form	
*Senate Bill 13 Verification Form	
*Senate Bill 19 Verification Form	
*Signature Page (Section IX in the RFP)	
Submittal Checklist (Section X in the RFP)	
1 Original* and 3 Copies of Submittal	

\*Documents marked with an asterisk on this checklist require a signature. Be sure they are signed prior to submittal of submittal.

## SENATE BILL 13 VERIFICATION

I, \_\_\_\_\_, the undersigned representative of \_\_\_\_\_, (Company or Business name) (hereafter referred to as company) **being an adult over the age of eighteen (18) years of age, verify that the company named-above, under the provisions of Subtitle F, Title 10, Chapter 809, Government Code 2274:**

- 1) does not boycott energy companies and;**
- 2) will not boycott energy companies during the term of the contract.**

*Pursuant to Section 2274.001, Texas Government Code:*

- 1. "Boycott energy company" has the meaning assigned by Section 809.001; and*
  - 2. "Company" has the meaning assigned by Section 809.001, except that the term does not include a sole proprietorship.*
- 

\_\_\_\_\_  
**SIGNATURE OF COMPANY REPRESENTATIVE:**

\_\_\_\_\_  
**TYPE/PRINT NAME AND TITLE:**

\_\_\_\_\_  
**DATE:**

## SENATE BILL 19 VERIFICATION

I, \_\_\_\_\_, the undersigned representative of \_\_\_\_\_, (Company or Business name) (hereafter referred to as company) **being an adult over the age of eighteen (18) years of age, verify that the company named-above, under the provisions of Subtitle F, Title 10, Government Code Chapter 2274:**

- (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and,**
- (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.**

*Pursuant to Section 2274.001, Texas Government Code:*

- 1) *"Ammunition" means a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile.*
- 2) *"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or associations that exists to make a profit. The term does not include a sole proprietorship.*
- 3) *"Discriminate against a firearm entity or firearm trade association":*
  - a) *means, with respect to the entity or association, to:*
    - i) *refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association;*
    - ii) *refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or*
    - iii) *terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; and*
  - b) *does not include:*
    - (i) *the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and*
    - (ii) *a company 's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship:*
      - (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or*

*(bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity 's or association 's status as a firearm entity or firearm trade association.*

- 4) *"Firearm" means a weapon that expels a projectile by the action of explosive or expanding gases.*
  - 5) *"Firearm accessory" means a device specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and an item used in conjunction with or mounted on a firearm that is not essential to the basic function of the firearm. The term includes a detachable firearm magazine.*
  - 6) *"Firearm entity" means:*
    - a) *firearm, firearm accessory, or ammunition manufacturer, distributor, wholesaler, supplier, or retailer; and*
    - b) *a sport shooting range as defined by Section 250.001, Local Government Code.*
  - 7) *"Firearm trade association" means any person, corporation, unincorporated association, federation, business league, or business organization that:*
    - a) *is not organized or operated for profit and for which none of its net earnings inures to the benefit of any private shareholder or individual;*
    - b) *has two or more firearm entities as members; and*
    - c) *is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.*
- 

---

**SIGNATURE OF COMPANY REPRESENTATIVE:**

---

**TYPE/PRINT NAME AND TITLE:**

---

**DATE:**



## HOUSE BILL 89 VERIFICATION

I, \_\_\_\_\_, the undersigned representative of \_\_\_\_\_, (Company or Business name) (hereafter referred to as company) **being an adult over the age of eighteen (18) years of age, verify that the company named-above, under the provisions of Subtitle F, Title 10, Government Code Chapter 2270:**

**1. Does not boycott Israel currently; and**

**2. Will not boycott Israel during the term of the contract.**

**3) Is not currently listed on the State of Texas Comptroller's Companies that Boycott Israel List located at <https://comptroller.texas.gov/purchasing/publications/divestment.php>**

*Pursuant to Section 2270.001, Texas Government Code:*

*1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and*

*2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.*

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**SIGNATURE OF COMPANY REPRESENTATIVE:**

\_\_\_\_\_  
**TYPE/PRINT NAME AND TITLE:**

\_\_\_\_\_  
**DATE:**