

## SOLICITATION TERMS AND CONDITIONS

**By submitting a response, respondent agrees that it has read and fully intends to comply with the terms and conditions contained in this solicitation document as applicable to any subsequent contract or funding agency requirements or agreements. Exceptions to these General Terms and Conditions are not permitted.**

### **A. PBRPC Terms and Conditions**

1. PBRPC will not pay for any expenses incurred prior to the execution date of a contract, or any expenses incurred after the termination date of the contract.
2. All materials submitted to PBRPC, including any attachments, appendices, or other information submitted as a part of a submission, are considered public information, unless otherwise noted in the response itself as a trade secret or proprietary information, and become the property of PBRPC upon submission and may be reprinted, published, or distributed in any manner by PBRPC according to open records laws, requirements of the US Department of Labor and the State of Texas, and PBRPC policies and procedures. PBRPC is not responsible for the return of creative examples of work submitted.
3. PBRPC will not be held accountable if material from submissions is obtained without the written consent of the contractor by parties other than PBRPC, at any time during the evaluation process.
4. Contract Termination:

#### *a. Convenience*

PBRPC may terminate this Agreement in whole or in part without cause at any time by written notice by certified mail to the Contractor whenever for any reason PBRPC determines that such termination is in the best interest of PBRPC. Upon receipt of notice of termination, all services hereunder of the Contractor and its employees and subcontractors shall cease to the extent specified in the notice of termination. In the event of termination in whole, the Contractor shall prepare a final invoice within 30 days of such termination reflecting the services actually performed which have not appeared on any prior invoice. Such invoice shall be satisfactory to the Executive Director or his designee. PBRPC agrees to pay the Contractor, in accordance with the terms of the Agreement, for services actually performed and accruing to the benefit of PBRPC, less payment of any compensation previously paid.

The Contractor may cancel or terminate this Agreement upon thirty (30) days written notice by certified mail to PBRPC. The Contractor may not give notice of cancellation after it has received notice of default from PBRPC. In the event of such termination prior to completion of the Agreement provided for herein, PBRPC agrees to pay services herein specified on a prorated basis for work actually performed and invoiced in accordance with the terms of this Agreement, less payment of any compensation previously paid.

#### *b. Default*

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

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

In the event of such termination, all services of the Contractor and its employees and subcontractors shall cease, and the Contractor shall prepare a final invoice reflecting the services actually performed pursuant to the Agreement which have not appeared on any prior invoice. Such invoice must be satisfactory to the Executive Director of PBRPC or her designee. PBRPC agrees to pay the Contractor, in accordance with the terms of this Agreement, for services actually performed and accruing to the benefit of PBRPC as reflected on said invoice, less payment of any compensation previously paid and less any costs or damages incurred by PBRPC as a result of such default, including incremental costs that PBRPC will incur to have the Agreement completed by a person other than the contractor.

**B. Insurance**

Respondent must provide professional liability, general liability and property insurance in amounts in accordance with applicable State Statute or Federal Regulation sufficient to cover applicable contractual liability, protect program equipment, and facilities. Respondent must ensure that any owned, leased, or non-owned automobiles used in performance of any contractual agreement by Respondent's employees or agents are covered by sufficient automobile liability insurance. Respondent further represents to PBRPC that it either has Workers' Compensation insurance in the amount required by statute or is self-insured for Workers' Compensation coverage under statute. All insurance certificates, policies, and binders must be maintained by Respondent at its program site for review by PBRPC at any time, and a copy must be provided to PBRPC upon contract award.

**C. Contact by Respondent**

To ensure a fair and competitive environment, direct communication between PBRPC employees other than the Solicitation Contact or any party able to create an unfair advantage to Respondent or disadvantage to other Respondents with respect to the Solicitation process, or the award of a Contract is strictly prohibited. This restricted period of communication begins on the issue date of the Solicitation and for Respondent(s) not selected for award ends with the conclusion of the protest period identified in the Solicitation document and for Respondents(s) selected for award ends with the Contract execution. This restriction does not apply to communications to other PBRPC employees during a Pre-Proposal/Bid or Response conference or other situations where the Solicitation Contact has expressly authorized direct communications with other staff. A Respondent who intentionally violates this requirement of the Solicitation process or otherwise deliberately or unintentionally benefits from such a violation by another party may have its Submission rejected in accordance with PBRPC Procurement Policy. Respondent(s) will not offer any gratuities, favors, or anything of monetary value to any official or employee of PBRPC (including any and all members of the evaluation committee) for the purposes of influencing consideration of any Submission.

**D. Public Information Act**

Respondent understands that PBRPC will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Respondent is required to make any information created or exchanged with PBRPC pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to PBRPC.

**E. Contract Assignment**

Respondent may not assign the contract or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, the contract without the prior written consent of PBRPC, and any attempted or purported assignment, transfer or delegation thereof without such consent shall be null and void.

**F. Updates to the Solicitation**

Any changes, corrections, additions, or deletions made to this Solicitation will be posted to the PBRPC website ([pbrpc.org](http://pbrpc.org)). **It is the responsibility of Respondents to frequently check the website for any possible changes.**

**G. PBRPC Responsibilities**

PBRPC is responsible for project administration and final decisions on all contractual matters. PBRPC has sole discretion and reserves the right to cancel this Solicitation or to reject any or all submissions received prior to the contract award. PBRPC reserves the right to waive any formalities concerning this Solicitation, or to reject any or all submissions or any part thereof.

**H. Accommodation Compliance**

In compliance with Americans with Disabilities Act, PBRPC will provide for reasonable accommodations for persons attending PBRPC activities. Requests must be received by PBRPC twenty-four (24) hours prior to the activity.

**I. Applicability to Subcontractors**

Respondent agrees that all contracts it awards pursuant to the contract awarded as a result of this procurement Solicitation will be bound by the foregoing terms and conditions.

**J. False Statements**

Respondent represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Response and any resulting contract.

**K. Management Plans/Consortiums, etc.**

Consortiums, joint ventures, or teams submitting responses considered non-responsive to this Solicitation unless they have demonstrated in a management plan that all contractual responsibility rests solely with one prime contractor or legal entity of the team. A duly authorized official of the prime respondent must sign the cover letter and other pertinent certifications.

**L. Interpretation of Specifications**

Any specifications and/or product references contained are intended to be descriptive rather than restrictive. PBRPC is soliciting responses to provide a complete service package which meets its overall requirements. Specific services and collection references may be included in this Solicitation for guidance, but they are not intended to preclude Respondents from recommending alternative solutions offering comparable or better performance or value. Results of informal meetings or discussions between a potential Respondent and PBRPC official or employee may not be used as a basis for deviations from the requirements contained in this Solicitation. The intent of the specifications is to provide Respondent with sufficient information concerning the Products/Services to be contracted so Respondent can prepare and submit an acceptable Response. The specifications may be detailed or general in nature. Details of construction, materials, or the way in which services will be provided, are left to the discretion of the Respondent, provided only that any offering must conform, as a minimum, to best Industry standards and practices and to what is currently being sold in the marketplace. Requirements contained in the Solicitation are not considered to be biased toward any Respondent(s) competing under this Solicitation.

**M. Brand Name or Equivalent**

Wherever in the specifications any materials or processes are indicated or specified by patent or proprietary name and/or by name of manufacturer, such specifications will be deemed to be used for the purpose of facilitating descriptions of the performance, materials and/or processes desired and must be deemed to be followed by the words, "or equivalent", if not stated in the specifications. The burden of proof will rest with the Respondent, in the course of a technical evaluation, to prove that the proposed item(s) are equivalent to the performance, materials, processes, or articles specified. Determination as to whether the items(s) bid is/are equivalent to those specified will rest solely with PBRPC and the Customer. If a respondent is offering an "or equivalent" item, respondent must list the manufacturer's name and product number of the item offered. If this detail is not provided, it will be assumed respondent is offering the exact item specified. PBRPC's decision whether an item is an equivalent to the item specified is final.

**N. Requirements Applicable to Physical Goods**

In the case of physical goods (e.g., equipment, material, supplies, as opposed to services), all Products offered must comply with any applicable provisions of the Texas Business and Commerce Code, Title 1, Chapter 2 and with at least the following:

- a. Be new, unused, and not refurbished.
- b. Not be a prototype as the general design, operation and performance. This requirement is NOT meant to preclude Respondent from offering new models or configurations which incorporate improvements in a current design or add functionality, but in which new model or configuration may be new to the marketplace.
- c. Include all accessories which may or may not be specifically mentioned in the Solicitation, but which are normally furnished or necessary to make the Product ready for its intended use upon delivery. Such accessories must be assembled, installed and adjusted to allow continuous operation of Product at time of delivery.
- d. Have assemblies, sub-assemblies and component parts that are standard and interchangeable throughout the entire quantity of a Product as may be purchased simultaneously by any Customer.
- e. Be designed and constructed using current industry accepted engineering and safety practices, and materials.
- f. Be available for inspection at any time prior to or after procurement.

**O. Samples**

Samples, when required, must be submitted at no expense to PBRPC. If not destroyed or consumed during testing, samples will be returned upon request at Offeror's expense. Samples will be used to determine if the proposed items meet the specifications stated in the Solicitation. If Respondent fails to provide samples within five (5) day period, as required, PBRPC may reject the Response and not consider it for further evaluation.

**P. Measurements**

If any measurement stated for items are approximates. PBRPC reserves the right to accept items that are similar in size, if in PBRPC's judgment, the item offered fulfills the intended purpose.

**Q. Variances**

Any variance in the specifications or performance of Products offered pursuant to this Solicitation will be deemed acceptable to PBRPC only if the variance MEETS or EXCEEDS the specifications and requirements of this Solicitation.

**R. Publicity**

Any publicity released by the Respondent giving reference to this contract, whether in the form of press releases, brochures, photographic coverage, or verbal announcement shall be issued only with pre-approval of PBRPC.

**S. Warranty and Copyright**

Submissions must include all warranty information, including items covered, items excluded, duration, and renewability. Submissions must include proof of licensing if using third party code for programming.

**T. Access and Protections of PBRPC Information Resources, Data, and Credentials**

Contractor is responsible for, must protect, and shall provide adequate safeguards against any unauthorized use, modification, or disclosure of PBRPC information resources, data, and credentials. Contractor and subcontractors shall stay up to date and aware of current, ongoing, and potential telecommunications security risks in Contractor and subcontractors given environment(s) and must always consider information sensitivity and transmission security issues when selecting a communications medium. Contractor and subcontractors are required to utilize up-to-date and adequate anti-virus or malware protection software for all systems and devices used to access PBRPC information resources, data, and credentials. Contractor is responsible for any incident arising from improperly protected PBRPC information resources, data, and credentials.

**U. Information Resources Security Policy**

Contractor shall maintain a written information security policy, which at minimum: 1) ensures that all employees and subcontractor's employees shall complete a cybersecurity training program certified under section 2054.5192 of the Texas Government Code. Such training must occur during the contract term and renewal period. Contractor shall provide PBRPC with verification of required training upon completion or PBRPC's request; 2) provides regular training of all employees and subcontractor's employees on applicable and up to date security procedures and techniques; 3) requires that contractor and subcontractors maintain privacy policies that protect private data as prescribed by applicable state, local, federal privacy laws and regulations; and, 4) requires that contractor and subcontractors utilize adequate safeguards to address any security vulnerabilities. Upon request, Contractor shall provide PBRPC with a copy of company and/or subcontractor's written information security policies.

**V. Security Breach**

Contractor shall notify PBRPC within 24 (twenty-four) hours of Contractor's discovery of a security incident, breach, or unauthorized use, modification, or disclosure of PBRPC information resources, data, or credentials. Hereinafter, such an event will be referred to as a "security breach" in this section. Upon immediate discovery of security breach, Contractor will coordinate with PBRPC to determine and implement an adequate and timely action plan to mitigate security breach and resolve any issues resulting from security breach. Contractor shall bear all associated costs for any security breach caused by the negligence or willful misconduct of the Contractor and subcontractors.

**W. Compliance with Federal Law, Regulations, and Executive Orders**

Contractor will comply with all applicable federal law, regulations, executive orders, policies, procedures, and directives.

**X. Right and Privileges**

Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisitions Regulations Council (Councils) as authorized by 41 U.S.C 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. When federal funds are expended by the Permian Basin Regional Planning Commission, it reserves all rights and privileges under the applicable laws and regulations with respect to this agreement in the event of breach of contract by either party.

**Y. Rights to Inventions Made Under a Contract or Agreement**

If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Respondent certifies that during the term of the agreement, the Respondent agrees to comply with all applicable requirements as referenced.

**Z. Anti-Competitive Behavior/Anti-Trust Affirmation**

Respondent will not collude, in any manner, or engage in any practice, with any other Respondent(s) which may restrict or eliminate competition or otherwise restrain trade. Respondent also represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Response to any competitor or any other person engaged in the same line of business as Respondent.

**AA. Financial Participation Prohibited**

Pursuant to Section 2155.004(a) of the Texas Government Code, Respondent certifies that neither Respondent nor any person or entity represented by Respondent has received compensation from PBRPC to participate in the preparation of the specifications or solicitation on which this Response or contract is based. Under Section 2155.004(b) of the Texas Government Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.

**BB. Suspension and Debarment**

Debarment and Suspension (Executive Orders 12549 and 12689) – A contract award (2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1966 Comp. p. 189) and 12689 (3 CFR Part 1989 Comp. p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Respondent certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas and at all times during the term of the Contract neither it nor its principals will be debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas. Respondent shall immediately provide the written notice to PBRPC if at any time the Respondent learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. PBRPC may rely upon a certification of the Respondent that the Respondent is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless the PBRPC knows the certification is erroneous.

**CC. Conflict of Interest**

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

- A. **Conflict of Interest Questionnaire:** Chapter 176 of the Texas Local Government Code requires contractors contracting or seeking to contract with PBRPC to file a conflict-of-interest questionnaire (CIQ) if they have an employment or other business relationship with an PBRPC officer or an officer's close family member. The required questionnaire and instructions are located on the PBRPC website or at the Texas Ethics Commission website <https://www.ethics.state.tx.us/forms/conflict/>. PBRPC officers include its Board of Directors and Executive Director, who are listed on the PBRPC website. Respondent must complete and file a CIQ with the Texas Ethics Commission if an employment or business relationship with PBRPC office or an officer's close family member as defined in the law exists.
- B. **Certificate of Interested Parties Form – Form 1295:** As required by Section 2252.908 of the Texas Government Code. PBRPC will not enter a Contract with Contractor unless (i) the Contractor submits a disclosure of interested parties form to PBRPC at the time the Contractor submits the contract PBRPC, or (ii) the Contractor is exempt from such requirement. The required form and instructions are located at the Texas Ethics Commission website [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm). Respondents who are awarded a Contract must submit their Form 1295 with the signed Contract to PBRPC.

**DD. Discrimination**

Respondent and potential subcontractors must comply with all Federal statutes relating to nondiscrimination. These include, but are not limited to:

- a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color, or national origin
- b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex
- c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps
- d) The Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101- 6107), which prohibits discrimination on the basis of age
- e) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse
- f) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism
- g) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records
- h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing
- i) Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) that may apply to the application.

**EE. Equal Employment Opportunity**

Respondent represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities. The equal opportunity clause provided under 41 CFR 60-1.4(b) is hereby incorporated by reference.

**FF. Drug-Free Workplace**

Respondent represents and warrants that it shall comply with the applicable provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.) and maintain a drug-free work environment. PBRPC may request a copy of this policy upon contract award.

**GG. Copeland “Anti-Kickback” Act**

The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into the contract. (2) The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as appropriate agency instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses. A breach of the contract clauses above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

**HH. Byrd-Anti Lobbying Amendment**

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

**II. Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Equipment (Effective Aug. 13, 2020 and as amended October 26, 2020)**

Pursuant to 2 CFR 200.216, Contractor shall not offer equipment, services, or system that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. “Covered telecommunications equipment or services means 1) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); 2) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); 3) telecommunications or video surveillance services provided by such entities or using such equipment; or 4) telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. Respondent must comply with requirements for certifications. The provision at 48 C.F.R Section 52.204-26 requires that offerors review SAM prior to completing their required representations. This rule applies to all acquisitions, including acquisitions at or below the simplified acquisition threshold and to acquisitions of commercial items, including commercially available off-the-shelf items.

**JJ. Buy America Requirement (Applies only to Federally Funded Highway and Transit Projects)**

With respect to products purchased by PBRPC for use in federally funded highway projects, Contractor shall comply with all federal procurement laws and regulations with respect to such projects, including the Buy America provisions set forth in 23 U.S.C. Section 313, 23 C.F.R. Section 635.410, as amended, and the Steel and Iron Preference provisions of Texas Transportation Code Section 223.045, to the extent applicable. Contractor agrees to provide all certifications required by PBRPC regarding such programs. With respect to products purchased by PBRPC for use in federally funded transit projects, Contractor shall comply with all federal procurement laws and regulations with respect to such projects, including the Buy America provisions set forth in 49 U.S.C. Section 5323(j)(1), 49 C.F.R. Sections 661.6 or 661.12, to the extent applicable. Contractor agrees to provide all certifications required by PBRPC regarding such programs.

**KK. Domestic Preference**

In accordance with 2 CFR 200.322, as appropriate and to the extent consistent with law, when using federal grant award funds PBRPC should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). PBRPC must include this requirement in all subawards including all contracts and purchase orders for work or products under the federal grant award. If Contractor intends to qualify for Purchase Orders using federal grant money, it shall work with PBRPC to provide all required certifications and other documentation needed to show compliance.

**LL. Compliance with Energy Policy and Conservation Act**

Respondent certifies that Respondent complies with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

**MM. Clean Air and Water Pollution Control Act and EPA Regulations**

Contracts and subgrants of amounts more than \$150,000 must contain a provision that requires the Contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Pursuant to the Federal Rule above, Respondent certifies that it complies with all applicable provisions of the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) and will remain in compliance during the term of the Contract. Respondent certifies that Respondent complies with all applicable standards, orders, regulations, and/or requirements issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended (13 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15.

**NN. Procurement of Recovered Materials**

In accordance with 2 CFR 200.323, the Permian Basin Regional Planning Commission and the Respondent must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include: (1) procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; (2) procuring solid waste management services in a manner that maximizes energy and resource recovery; and (3) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Pursuant to the Federal Rule above, as required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6962(c)(3)(A)(i)), Respondent certifies that the percentage of recovered materials content for EPA-designated items to be delivered or used in the performance of the Agreement will be at least the amount required by the applicable contract specifications or other contractual requirements.

**OO. Profit as a Separate Element of Price**

Purchases using federal funds for more than the current Simplified Acquisition Threshold of \$250,000, requires negotiation of profit as a separate element of the price. See, 2 CFR 200.324(b). Contractor agrees to provide information and negotiate regarding profit as a separate element of the price for the purchase. Contractor also agrees that the total price, including profit, charged by Contractor will not exceed the awarded pricing, including any applicable discount, under any awarded contract.

**PP. Prevailing Wage**

Respondent and any potential subcontractors have a duty to and shall pay the prevailing wage rate under the Davis Bacon Act, 40 U.S.C. 276a – 276a-5, as amended, and the regulations adopted thereunder contained in 29 C.F.R. pt. 1 and 5.

**QQ. Contract Work Hours and Safety Standards**

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**RR. Payment Terms**

PBRPC's standard term of payment is Net 30 Days from the date of the invoice. If discounts for accelerated payment are offered, it must be clearly indicated in the submission. However, agreements subject to funding from various sources could delay payment for at least ninety (90) days.

**SS. Tax Exempt Status**

PBRPC is considered a unit of government is exempt from Federal and State sales, excise or use taxes. Respondent must not include taxes in its Response. It is the responsibility of Contractor to determine the applicability of any taxes to an order and act accordingly. Exemption certificates will be provided upon request.

**TT. Invoicing**

To expedite payment, invoices must be submitted and itemized as to service, quantity, part number, description, and applicable discount (if any). Variations may delay payment. In addition, invoices must reference the PBRPC Purchase Order Number (if applicable). Submit invoices to [APinvoices@PBRPC.com](mailto:APinvoices@PBRPC.com)

**UU. Contracting Information Responsibilities**

If the contract is at least \$1 million, Respondent represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552 of the Government Code, may apply to the contract and the Respondent agrees that the contract can be terminated if the Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

**VV. Covid-19 Vaccine Passport Prohibition**

Under Section 161.0085 of the Texas Health and Safety Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract.

**The following Provisions are additionally applicable to The Workforce Solutions and Area Agency on Aging Solicitations:**

**WW. Assurances**

Respondent agrees and must submit signed compliance documents and statutory assurances which will govern program operations. In addition, respondents may be asked to submit additional information by PBRPC during the Solicitation process or at any time during the fiscal year.

**XX. Certification of Compliance with Child Support and Medical Support Enforcement**

The State of Texas requires that all potential providers certify compliance with the Texas Family Code, Subtitle D (Administrative Services), Chapter 231, Section 231.006, Ineligibility to Receive State Grants or Loans or Receive Payment on State Contracts, which requires the following certification: the provider certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.