

**CITY OF MESQUITE**  
**STANDARD TERMS AND CONDITIONS**

These Standard Terms and Conditions are applicable to any procurement of goods or services by the City of Mesquite (herein after the “City”), whether by contract or purchase order. For purposes of these Standard Terms and Conditions a seller, vendor, bidder, proposer, respondent, contractor, or individual attempting to do business with the City will be hereafter referred to as “Contractor”.

The Contractor agrees that the contract/purchase order shall be governed by the following terms and conditions, unless exceptions are duly noted in writing and signed by both the City and Contractor. No terms and conditions contained in the Contractor’s proposal response, bid, invoice, quotes, statement, or other Contractor created document (collectively herein after the “Contractor’s Offer”) shall modify the terms set forth herein. If there is a conflict between the provisions of these Standard Terms and Conditions and the Contractor’s Offer then these Standard Terms and Conditions shall control.

1. **Contractor’s Obligations:** The Contractor shall fully and timely provide all deliverables described in the contract/purchase order in strict accordance with the terms, covenants, and conditions of the contract/purchase order.
2. **Silence of Specifications:** The silence of any term, condition, or specifications as to any detail or to the omission from it of a detailed description concerning any point related to a purchase by the City, shall be regarded as meaning that only the best commercial practices are to prevail.
3. **Costs Related to Offer:** The City is not liable for any cost incurred by Contractor in relation to Contractor’s Offer. This includes but is not limited to costs to determine the nature of the bid/proposal, submitting, transmitting, preparing, negotiating, presentations or any other costs a business or individual would incur in submitting Contractor’s Offer.
4. **Public Documents:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be confidential, trademarked, copyrighted, or proprietary must be clearly and ambiguously marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code.
5. **Tax Exemption:** The City is exempt from Federal excise taxes, State taxes, and City sales taxes. The referenced taxes must not be included in any invoiced amount. The City will furnish a tax exemption certificate to Contractor upon request.
6. **Payment in Thirty Days:** Payment shall be in accordance with the Texas Prompt Payment Act (Chapter 2251 of the Texas Government Code) as amended, specifically, payment shall be made to the Contractor by the 30<sup>th</sup> calendar day after the latest of the following: 1) the date the City receives the goods under the Contract 2) the date the performance of the service(s) under the Contract are completed OR 3) the date the City receives the invoice for the goods or services.
7. **Late Payment:** If payment is not timely made in accordance with the Texas Prompt Payment Act (Chapter 2251 of the Texas Government Code) then interest shall accrue on

the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate.

8. **Offset:** The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of: i. delivery of defective or non-conforming deliverables by the Contractor; ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims; iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment; iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor; v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or damages for the anticipated delay; vi. failure of the Contractor to submit proper invoices with purchase order number, with all required attachments and supporting documentation; or vii. failure of the Contractor to comply with any material provision of the Contract.
9. **Appropriations:** The awarding or continuation of the contract/purchase order is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds lawfully appropriated and available for this contract/purchase order. A failure to appropriate funds shall render the contract/purchase order null and void to the extent funds are not appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the contract/purchase order, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the contract/purchase order. In the event of inadequate appropriation of funds, the City shall have no further liability or obligations under the contract/purchase order and there will be no penalties nor fees charged to the City.
10. **Invoices:** Invoices must be timely submitted by the Contractor to the City of Mesquite at the address designated in writing by the City. The City contract/purchase order number must appear on all invoices, delivery memoranda, bills of lading, packing and correspondence.
11. **Travel expenses:** All travel, lodging, out of pocket expenses, and per diem expenses in connection with the contract/purchase order shall be paid by the Contractor.
12. **Special Tools/Equipment:** If the price stated on the Contractor's Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of fulfilling this contract/purchase order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.
13. **Audit:** The City reserves the right to audit the records and performance of Contractor during the term of the contract/purchase order and for three years thereafter.

14. **Subcontractors:** The Contractor shall not use subcontractors unless expressly agreed to in writing by the City. The Contractor shall be fully responsible to the City for all acts and omissions of the subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the contract/purchase order shall create for the benefit of any such subcontractor any contractual relationship between the City and any such subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such subcontractor except as may otherwise be required by law.
15. **Packaging Deliverables:** The Contractor will package deliverables in accordance with standard commercial practices and shall include a packing list showing the description of each item, the quantity and unit price unless otherwise specified by the City. The Contractor shall bear cost of packaging.
16. **Shipment Under Reservation:** The Contractor shall not ship deliverables under reservation and a tender of a bill of lading will not operate as a tender of deliverables.
17. **Risk of Loss:** Title to and risk of loss for deliverables passes to the City only once the City both receives and accepts the deliverables.
18. **Transportation Charges:** Deliverables must be shipped F.O.B. point of delivery unless otherwise specified by the City. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables.
19. **Inspection and Rejection:** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables.
20. **Defective Tender:** Every tender or delivery of deliverables must fully comply with all provisions of the contract/purchase order as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
21. **Non-conforming Deliverables:** The City may, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, accept the deliverables. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
22. **Work Location:** The City shall provide the Contractor access to where the Contractor is to perform services. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics

of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. **THE CONTRACTOR HEREBY RELEASES AND HOLDS THE CITY HARMLESS FROM AND AGAINST ANY LIABILITY OR CLAIM FOR DAMAGES OF ANY KIND OR NATURE IF THE ACTUAL SITE OR SERVICE CONDITIONS DIFFER FROM EXPECTED CONDITIONS.** The Contractor shall, at all times, exercise reasonable precautions for the safety of their employees, City Staff, participants and others on or near the City's facilities.

23. **Modification, Assignment, and Renewal:** The contract/purchase order may not be altered, modified or amended except in writing properly executed by the parties and may not be assigned to a third party. Any contract renewals and/or extensions must be in writing and executed by a duly authorized representative of the City.
24. **Price Escalation:** Should it become necessary during the term of the contract to make any change in design or any alterations that will increase expense to City, the Contractor must submit a price increase request to the City in writing. Price increases must be approved by the City and no payment for additional materials or services, beyond the amount stipulated in the contract/purchase order, shall be paid without prior written approval from the City. All price increase requests must be supported by manufacture documentation, and/or a formal cost justification letter. Awarded vendor must honor previous prices for one calendar year from the effective date of the contract/purchase order (unless otherwise agreed in writing by the City). All price change requests must be provided to the City in the same format used in the original contract.
25. **Warranty – Price:** The Contractor warrants the prices quoted in the contract/purchase order are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase. The Contractor certifies that the prices in the contract/purchase order have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
26. **Warranty – Title:** The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the contract/purchase order, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. **THE CONTRACTOR SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL ADVERSE TITLE CLAIMS TO THE DELIVERABLES.**
27. **Warranty – Deliverables:** The Contractor warrants and represents that all deliverables sold to the City under the contract/purchase order shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the contract/purchase order, to any samples furnished by the Contractor, to the terms, covenants and conditions of the contract/purchase order, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and

standards. Unless otherwise specified by the City in writing, the deliverables shall be new or recycled merchandise, and not used or reconditioned. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect. Unless otherwise specified by the City in writing, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the warranties herein are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs shall be borne exclusively by the Contractor. The City shall attempt to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the contract/purchase order from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.

28. **Warranty – Manufacturer:** If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
29. **Warranty – Services:** The Contractor warrants and represents that all services to be provided the City under the contract/purchase order will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect. Unless otherwise specified in the Special Terms and Conditions the warranty period shall be at least one year from the date services are formally completed and accepted by the City. If during the warranty period, one or more of the warranties herein are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall attempt to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the contract/purchase order from the Contractor, and purchase conforming services from other sources. In such event,

the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

30. **Assurance of Intent to Perform:** Whenever the City has good faith reason to question the Contractor's intent to perform, demand may be made to the Contractor for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the City may treat this failure as an anticipatory repudiation of the contract/purchase order.
31. **Stop Work Notice:** The City may issue a notice to the Contractor demanding the Contractor immediately stop all work under the contract/purchase order ("Stop Work Notice") in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice. The City shall not be liable for any goods or services provided by Contractor contrary to the Stop Work Notice.
32. **Default by Contractor:** The Contractor shall be in default under the contract/purchase order if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the contract/purchase order (b) fails to provide adequate assurance of performance as required by these Standard Terms and Conditions, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation or fraudulent statement to the City in relation to the contract/purchase order or in any report or deliverable required to be submitted by the Contractor to the City.
33. **Termination:** City may, at its option, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law, or in equity or otherwise under the contract/purchase order, terminate further work under the contract/purchase order, in whole or in part by giving at least thirty (30) days prior written notice to Contractor and all services being terminated shall cease upon the date such notice is received, unless stated otherwise in writing by the City. If the City elects to terminate this Contract/Purchase Order, the Contractor shall provide the City a refund of any prepaid, unused portions paid by City, calculated from the date of termination to the end of the then-current term. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of termination in accordance with the terms hereof. No amount will be due by City to Contractor for loss or anticipated profits.
34. **Termination – Default:** The City reserves the right to enforce the performance of the contract/purchase order in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of the contract/purchase order. The City reserves the right to terminate the contract/purchase order immediately in the event the Contractor fails to 1) meet delivery schedules or, 2) otherwise perform in accordance with the terms and conditions of the contract/purchase order. In addition to other remedies, a breach of contract or default by Contractor authorizes the City to award the contract to another Contractor, purchase elsewhere and charge the full increase in cost and handling to

the defaulting Contractor. Additionally, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

35. **Claims:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or relates to the contract/purchase order, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City of Mesquite as required by the below provision 35 (Notice) and to the Mesquite City Attorney's Office at P.O. Box 850137, Mesquite, Texas 75185-0137.
36. **Notices:** All notices, requests, or other communications required or appropriate to be given under the contract/purchase order shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City of Mesquite Purchasing Division at 1515 North Galloway Avenue, Mesquite, Texas 75149 and marked to the attention of the Purchasing Manager.
37. **Remedies:** The Contractor and the City of Mesquite agree that each party has rights, duties, and remedies available as stated in the uniform commercial code and any other available remedy, whether in law or equity.
38. **Governing Law and Venue:** Contractor and City agree that the laws of the State of Texas shall apply to and govern the contract/purchase order and exclusive venue for any legal proceeding shall be in Dallas County, Texas.
39. **Independent Contractor:** Contractor and City agree for all purposes hereunder, the Contractor is and shall be an independent contractor and shall not, with respect to their acts or omissions, be deemed an agent or employee of City.
40. **INDEMNITY: CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST LIABILITY FOR ANY CLAIMS, LIENS, SUITS, DEMANDS, AND ACTIONS FOR DAMAGES, INJURIES TO PERSONS (INCLUDING DEATH), PROPERTY DAMAGE (INCLUDING LOSS OF USE), AND EXPENSES, INCLUDING COURT COSTS AND ATTORNEY'S FEES AND OTHER REASONABLE COSTS AND EXPENSES ARISING OUT OF OR**

**RESULTING FROM CONTRACTOR'S GOODS AND/OR SERVICES PROVIDED IN CONNECTION WITH OR INCIDENTAL TO THIS CONTRACT AND FROM ANY LIABILITY ARISING OUT OF, OR RESULTING FROM, THE INTENTIONAL ACTS OR NEGLIGENCE, INCLUDING ALL SUCH CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL, OR STATUTORY LAW, OR BASED IN WHOLE OR IN PART UPON THE NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF CONTRACTOR, INCLUDING BUT NOT LIMITED TO ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES, AND OTHER PERSONS WHETHER OR NOT ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY THE ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS OF THE OFFICERS, EMPLOYEES, OR AGENTS OF THE CITY.**

**CONTRACTOR FURTHER AGREES THAT IT SHALL AT ALL TIMES EXERCISE REASONABLE PRECAUTIONS ON BEHALF OF, AND BE SOLELY RESPONSIBLE FOR, THE SAFETY OF ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES AND OTHER PERSONS, AS WELL AS THEIR PROPERTY, WHILE ENGAGED IN THE DELIVERY OF SUCH GOODS AND/OR SERVICES PURSUANT TO THIS CONTRACT OR WHILE ON CITY'S PREMISES WHERE THE SERVICES ARE BEING PROVIDED. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT CITY SHALL NOT BE LIABLE OR RESPONSIBLE FOR THE NEGLIGENCE OF CONTRACTOR, INCLUDING BUT NOT LIMITED TO ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES, AND OTHER PERSONS.**

**FURTHER, CITY ASSUMES NO RESPONSIBILITY OR LIABILITY FOR HARM, INJURY, OR ANY DAMAGING EVENTS WHICH ARE DIRECTLY OR INDIRECTLY ATTRIBUTABLE TO PREMISE DEFECTS, REAL OR ALLEGED, IN THE VICINITY WHERE SUCH GOODS AND/OR SERVICES ARE TO BE DELIVERED BY CONTRACTOR, WHICH MAY NOW EXIST OR WHICH MAY HEREAFTER ARISE UPON THE PREMISES, RESPONSIBILITY FOR ANY AND ALL SUCH DEFECTS BEING EXPRESSLY ASSUMED BY CONTRACTOR. CONTRACTOR UNDERSTANDS AND AGREES THAT THIS INDEMNITY PROVISION SHALL APPLY TO ANY AND ALL CLAIMS, SUITS, DEMANDS, AND ACTIONS BASED UPON OR ARISING FROM ANY SUCH PREMISE DEFECTS OR CONDITIONS, INCLUDING BUT NOT LIMITED TO ANY SUCH CLAIM ASSERTED BY OR ON BEHALF OF CONTRACTOR, INCLUDING BUT NOT LIMITED TO ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES, AND OTHER PERSONS.**

**IT IS FURTHER AGREED WITH RESPECT TO THE ABOVE INDEMNITY, THAT CITY AND CONTRACTOR WILL PROVIDE THE OTHER PROMPT AND TIMELY NOTICE OF ANY EVENT COVERED WHICH IN ANY WAY, DIRECTLY OR INDIRECTLY, CONTINGENTLY OR OTHERWISE, AFFECTS OR MIGHT AFFECT THE CONTRACTOR OR CITY, AND CITY SHALL HAVE THE RIGHT TO COMPROMISE AND DEFEND THE SAME TO THE EXTENT OF ITS OWN INTERESTS.**



41. **Discrimination:** Contractor agrees that it will not discriminate on the basis of race, color, religion, national origin, sex, age, handicap, or disability.

42. **STATUTORY CONTRACTING REQUIREMENTS:** The following terms apply when required by applicable Texas statute(s) or for purchases funded or reimbursed using Federal funds:

**A. Boycotting Israel, Business with Foreign Terrorist Organizations, and Firearms Entities:**

1. Pursuant to Section 2271.002 of the Texas Government Code, unless otherwise exempt, if the Contractor employs 10 or more full-time employees and the Contract has a value of \$100,000 or more, the Contractor hereby (i) represents that it does not boycott Israel, and (ii) subject to or as otherwise required by applicable federal law, including without limitation 50 U.S.C. Section 4607, agrees it will not boycott Israel during the term of the contract. The terms “boycott Israel” and “company” shall have the meaning given such term in Section 2271.001, Texas Government Code. Failure to meet or maintain the requirements under this provision shall be considered a material breach of contract.
2. In accordance with Section 2252 of the Texas Government Code, Contractor further represents that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a foreign terrorist organization. As used in the immediately preceding sentence, “foreign terrorist organization” shall have the meaning given such term in Section 2252.151, Texas Government Code. Failure to meet or maintain the requirements under this provision shall be considered a material breach of contract.
3. Pursuant to Texas Government Code Chapter 2274, unless otherwise exempt, if the Contractor employs at least ten (10) fulltime employees and this Contract has a value of at least \$100,000 that is paid wholly or partly from public funds of the governmental entity, the Contractor represents that: (i) the Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii) the Contractor will not discriminate during the term of the contract against a firearm entity or firearm trade association.

**B. Federally Funded Projects: For projects using Federal funds the following shall apply:** The City of Mesquite, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and its Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award

**C. Contract Work Hours and Standards Act [29 C.F.R. § 5.5(b)]:**

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
3. Withholding for unpaid wages and liquidated damages. The (the Federal agency or the loan or grant recipient, whichever is applicable) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
4. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

**D. Clean Air Act:**

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

2. The contractor agrees to report each violation to the (City of Mesquite or applicant, whichever is applicable, entering into the contract) and understands and agrees that the (City of Mesquite or applicant, whichever is applicable, entering into the contract) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**E. Federal Water Pollution Control Act:**

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the (City of Mesquite or applicant, whichever is applicable, entering into the contract) and understands and agrees that the (City of Mesquite or applicant, whichever is applicable, entering into the contract) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**F. Debarment and Suspension:**

1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by (the City of Mesquite, or recipient/subrecipient/applicant, whichever is applicable). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (the City of Mesquite, or recipient/subrecipient/applicant, whichever is applicable), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and

throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**G. Byrd Anti-Lobbying, 31 U.S.C. § 1352 (as amended):**

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

**H. Recovered Materials:**

1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
  - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
  - b. Meeting contract performance requirements; or
  - c. At a reasonable price.
2. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
3. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

**I. Access to Records:** The following access to records requirements apply to this contract:

1. The Contractor agrees to provide the City of Mesquite, (recipient, if applicable), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
4. In compliance with the Disaster Recovery Act of 2018, the City of Mesquite and the Contractor acknowledge and agree that no language in this contract is intended

to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

- J. **Protection of Resident Workers:** The City of Mesquite complies with the Immigration and Nationality Act (INA), which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The Contractor must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). The Contractor shall establish appropriate procedures and controls so no services or products under the contract/purchase order will be performed or manufactured by any worker who is not legally eligible to perform such services or employment.
- K. **Health and Safety Laws:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. **THE CONTRACTOR SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, SUITS, ACTIONS, JUDGMENTS, FINES, PENALTIES AND LIABILITY OF EVERY KIND ARISING FROM THE BREACH OF THE CONTRACTOR'S OBLIGATIONS UNDER THIS PARAGRAPH.**
- L. **Compliance with Applicable Laws.** Contractor shall at all times observe and comply with all Federal, State and local laws, ordinances and regulations including all amendments and revisions thereto, which in any manner affect Contractor or the services and/or items to be provided, specifically and not limited to any ethics laws. In particular, Contractor is put on notice that CITY will require compliance with Chapter 176 of the Texas Local Government Code (hereinafter referred to as "Chapter 176") requiring any person who contracts or seeks to contract with CITY to disclose potential conflicts of interest as defined in Chapter 176 by completing the required Conflict of Interest Questionnaire and returning same to CITY in accordance with Chapter 176. Additionally, Section 2252.908 of the Texas Government Code was enacted in 2015, by the Texas Legislature pursuant to HB 1295, which provides that a governmental entity may not enter into certain contracts with a business entity on or after January 1, 2016, unless the business entity submits a disclosure of interested parties (Form 1295) to the governmental entity at the time the business entity submits the signed contract to the governmental entity. Further information regarding the disclosure of interested parties law and instructions on filing Form 1295 can be found at the Texas Ethics Commission web site at the following web address:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

the retainage by CITY of all services performed by Contractor; and (iii) the recovery by CITY of all consideration, or the value of all consideration, paid to Contractor pursuant to this contract.