

REQUEST FOR BID

**TREE REMOVAL SERVICES
for
The University of Texas Medical Branch at Galveston**

RFB No.: 10-22

Bid Submittal Deadline: 3:00 PM local Galveston, Texas time, November 20, 2009

Prepared by: Traci Davis-Johnson
Purchasing Supervisor

Date: November 4, 2009

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SECTION 1
NOTICE TO BIDDERS

BIDDER MUST COMPLETE AND SIGN BELOW

Federal Tax I.D. No.: _____

Company Name: _____

Address: _____

Phone No.: _____ FAX No.: _____

(Authorized Signature) (Date)

(Printed Name) (Title)

1.1 General

The University of Texas Medical Branch at Galveston (“UTMB”) is accepting competitive sealed bids to do removal, reduction, and disposal of dead trees caused from salt water intrusion due to Hurricane Ike in accordance with the terms, conditions and requirements set forth per Request for Bid, RFB No.: 10-22. This Request for Bid (RFB) provides sufficient information for interested parties to prepare and submit bids for consideration by UTMB.

Applicability of educational, state and local government, and any other available discounts should be strongly considered.

THIS RFB IS A SOLICITATION FOR BID AND IS NOT A CONTRACT OR AN OFFER TO CONTRACT.

BIDDERS ARE CAUTIONED TO READ THE INFORMATION CONTAINED IN THIS RFB CAREFULLY AND TO SUBMIT A COMPLETE RESPONSE TO ALL REQUIREMENTS AND QUESTIONS AS DIRECTED.

1.2 Submittal Deadline

UTMB will accept bids until 3:00 PM local Galveston, Texas time November 20, 2009

1.3 UTMB Contacts

Any questions or concerns regarding this Request for Bid shall be directed to:

Traci Davis-Johnson
Logistics/Acquisition
301 University Blvd.
Galveston, Texas 77555-1116

Ph.: 409-772-5394
Fax: 409-772-5309
e-mail: tdavis@utmb.edu

UTMB specifically requests that Bidders restrict all contact and questions regarding this RFB to the above named individual. The above named individual must receive all questions or concerns no later than November 12, 2009

1.4 Agreement Term

Agreement term will begin upon award of services under this RFB until work complete. .

1.5 Inquiries and Interpretations

Responses to inquiries which directly effect an interpretation or change to this RFB will be issued in writing by addendum (amendment) and mailed to all parties recorded by UTMB as having received a copy of the RFB. All such addenda issued by UTMB prior to the time that bids are received shall be considered part of the RFB, and the Bidder shall be required to consider and acknowledge receipt of such in his bid.

Only those UTMB replies to inquiries which are made by formal written addenda shall be binding. Oral and other interpretations or clarification will be without legal effect. Bidder must acknowledge receipt of all addenda in Section 6 of this RFB (Pricing and Delivery Schedule).

1.6 Texas Public Information Act

Bidder is hereby notified that UTMB strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information.

UTMB may seek to protect from disclosure all information submitted in response to this RFB until such time as a final Agreement is executed.

Upon execution of a final Agreement, UTMB will consider all information, documentation, and other materials requested to be submitted in response to this RFB, to be of a non-confidential and non-proprietary nature and, therefore, subject to public disclosure under the *Texas Public Information Act (Texas Government Code, Chapter 552.001, et seq.)*. Bidder will be advised of a request for public information that implicates their materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General. Certain information may be protected from release under Sections 552.101, 552.110, 552.113, and 552.131, *Texas Government Code*.

1.7 Criteria for Selection

The Bidder selected for an award will be the Bidder whose bid, as presented in the response to this RFB, is the most advantageous to UTMB. UTMB is not bound to accept the lowest priced bid if that bid is not in the best interest of UTMB as determined by UTMB.

Bids will be evaluated by UTMB personnel. The selection of the Seller for this award will be based on several factors to include, but not limited to, the following:

1. Bidder's Qualifications and Capabilities, prior experience and references
2. Cost
3. Delivery Schedule

1.8 Bidder's Acceptance of Evaluation Methodology

Submission of a bid indicates Bidder's acceptance of the evaluation methodology and Bidder's recognition that some subjective judgments must be made by UTMB.

1.9 Agreement Award Process

An award for the products/services specified herein will not be made until the necessary reviews have been completed. UTMB reserves the right to reject any bid which fails to meet the requirements as stated. UTMB reserves the right to contract for all or any portion of the products/services proposed by reason of this Request, award multiple Agreements, or to reject any and all bids if deemed to be in the best interests of UTMB and to re-solicit for bids.

1.10 Commitment

Bidder understands and agrees that this Agreement is issued predicated on anticipated requirements for removal, reduction, and disposal of dead trees caused from salt water intrusion and that UTMB has made no representation, guarantee or commitment with respect to any specific quantity of removal, reduction, and disposal of dead trees to be furnished under this Agreement. Further Seller recognizes and understands that any cost borne by the Seller which arises from Seller's performance hereunder shall be at the sole risk and responsibility of Seller.

1.11 Historically Underutilized Businesses

UTMB encourages and supports the participation of Historically Underutilized Businesses (HUBs) in responding to this RFB.

UTMB has reviewed this RFB in accordance with Chapter 1, Texas Administrative Code Section 111.14 (a) and has determined that subcontracting opportunities are not probable under this solicitation.

If your company does intend to subcontract any portion of the work, your bid must include a "HUB Subcontracting Plan" (HSP). The HSP Package, including the required forms and instructions, can be accessed via the UTMB's HUB Program website at http://www.utmb.edu/logistics/central_purchasing/hub_fed/hub_fed_home.htm.

If you have any questions or need assistance please contact UTMB's HUB Program Coordinator at (409) 747-8000.

1.12 Key Events Schedule

Issue Request for Bid	November 4, 2009
Bid Submittal Deadline	November 20, 2009

SECTION 2

BIDDING REQUIREMENTS

2.1 General Instructions

- A. Bidders should carefully read the information contained herein and submit a complete response to all requirements as directed.
- B. Bids and any other information submitted by Bidders in response to this Request for Bid shall become the property of UTMB.
- C. UTMB will not provide compensation to Bidders for any expenses incurred by the Bidder(s) for bid preparation, product evaluations or demonstrations that may be made, unless otherwise expressly indicated.
- D. Bids which are qualified with conditional clauses, alterations, items not called for in the RFB documents, or irregularities of any kind are subject to disqualification by UTMB. at its option.
- E. Each Bid should be prepared simply and economically, providing a straight-forward and concise description of Bidder's ability to meet the requirements of this RFB. Emphasis should be on completeness, clarity of content and responsiveness to the bid requirements.
- F. No bid may be changed, amended, or modified after it has been submitted in response to this notice, except for obvious errors in extension. However, a bid may be withdrawn and resubmitted any time prior to the time set for receipt of bids. No bid may be withdrawn after the bid opening without approval by UTMB which shall be based on Bidder's submittal, in writing, of a reason acceptable to UTMB.
- G. UTMB reserves the right to accept or reject any or all bids, waive any formalities, or minor technical inconsistencies, delete any item/requirement from this UTMB or resulting Purchase Order when deemed to be in UTMB's best interest. UTMB reserves the right to accept all, or any part of the Bidder's bid at the quoted prices. Representations made within the bid will be binding on responding Bidders. UTMB will not be bound to act by any previous communication or bid submitted by Bidders other than this RFB.
- H. Any changes or interpretations made in the form of an Addendum to this RFB will be forwarded to all known Bidders.
- I. Bids are to be valid for UTMB's acceptance for a minimum of 90 days from the submittal deadline date to allow time for evaluation, selection, and any unforeseen delays.
- J. Bidders wishing to submit a "No-Bid" are requested to return the first (1) page of the Request for Bid Form, (Notice to Bidders, Section 1). The returned form should indicate Bidder's name and include the words "No-Bid".
- K. Failure to comply with the requirements contained in this Request for Bid may result in the rejection of the bid. Repeated failure to respond completely to bid requirements may result in removal from the UTMB's Bidder's List.
- L. Questions should be directed to the UTMB Purchasing official identified on the cover page of this Request for Bid.

2.2 Submittal Instructions

- A. Only bids submitted on the Notice to Bidders form (Section 1) and the exhibits attached thereto will be accepted, unless otherwise permitted herein.
- B. Bid must be signed by Bidder's company official(s) authorized to commit such bids. Failure to sign and return the Notice to Bidders form (Section 1), the Bidders Affirmation (Section 5) will subject your bid to disqualification.
- C. Responses to this RFB should consist of answers to required questions in Section 7, Bidder Questionnaire. It is not necessary to repeat the question in your response, however, it is essential that you reference the question number with your response corresponding accordingly. In cases where a question does not apply or if unable to respond, reference the question number and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Briefly explain your reason when responding N/R.
- D. If e-mailed, submit a one (1) electronic version in an Adobe Acrobat (.pdf) format, or if mailed, submit one (1) original of the entire Bid and one electric version in Adobe Acrobat (.pdf) on a compact disc. Whether e-mailed or mailed, a signature must appear on the Notice to Bidders form (Section 1) and the Bidders Affirmation (Section 5) of all documents submitted.
- E. Submission
 1. One (1) electronic version of the bid or one (1) original of the bid, must be submitted and received in the UTMB Logistics/Acquisition's Department on or before the time and date specified in Subsection 1.2 and delivered, or e-mailed to:

If delivered in person or by courier service use this address:

Facilities Operations and Management /Purchasing
The University of Texas Medical Branch at Galveston
1302 Mechanic, 3rd Floor – Receptionist Desk
Galveston, Texas 77555-1116

If sent by U.S. Mail use this address:

Facilities Operations and Management/Purchasing
The University of Texas Medical Branch at Galveston
301 University Blvd.
Galveston, TX 77555-1116

e-mail: Vendor.bids@utmb.edu

Instructions for e-mail proposals:

- e-mail responses to this solicitation are for convenience only.
- Bidder is responsible for verifying receipt of e-mail by UTMB.
- Bid must be signed and in an Adobe Acrobat (.pdf) format, zip files are acceptable.
- Any e-mail response over ten megabytes (10MB) in size will be rejected.
- UTMB is not responsible for internet outages or other circumstances that may affect Bidder's electronic submission.

NOTE: *Show the RFP number and submittal date in the lower left-hand corner of your sealed proposal envelope or subject line of your e-mail.*

2. Late proposals properly identified will be returned to Respondent unopened. Late proposals will not be considered under any circumstances.
 3. Telephone proposals are not acceptable when in response to the Request for Proposal.
 4. Facsimile ("FAX") proposals are not acceptable when in response to this Request for Proposal.
- F. Late bids properly identified will be returned to Bidder unopened. Late bids will not be considered under any circumstances.
- G. Telephone Bids are not acceptable in response to this Request for Bid.
- H. Facsimile ("FAX") Bids are not acceptable when in response to this Request for Bid.

2.3 Specifications

- A. Any catalog, brand name or manufacturer's references used in this RFB is descriptive only (not restrictive) and is to indicate type and quality desired. Bids of like nature and quality will be considered unless advertised under a proprietary justification.
- B. If bidding on other than referenced brand(s) specified, Bidder **must** submit as part of their bid the following:
1. An exception list to indicate where the alternate product(s) quoted differs from that specified.
 2. Descriptive literature, illustrations, and/or specifications of quoted product(s).
NOTE: If no exception is taken to reference data or specifications, Bidder will be required to furnish the exact brand name(s)/product(s) as specified.
- C. All items must be new, in first class condition, including containers suitable for shipment and storage, unless otherwise indicated in the RFB documents.

2.4 Alternate Bids

UTMB will consider alternate bids submitted by responsive Bidders. Alternate bids shall be clearly marked with the proposed alternates and/or exceptions to the Special Conditions or Specifications delineated, and include all pricing/cost advantages, included, if applicable.

2.5 Pricing and Delivery Schedule

- A. Bidder must complete Pricing and Delivery Schedule, Section 6.
- B. UTMB is an institution of higher education, a government entity and a hospital, and as such, should be offered any and all applicable discounts associated with such activities or facilities. Such discounts, as applicable, must be identified and clearly noted in your bid response.

- C. Pricing reflects the full Scope of Work defined herein; inclusive of all associated cost for delivery, labor, insurance, taxes, overhead, and profit.
- D. UTMB will not recognize or accept any charges or fees to perform this work that are not specifically stated in the Bidder's bid.
- E. Cash or prompt payment discounts will not be considered in determining the low bid. All payment discounts offered will be taken, if earned and deemed in UTMB's best interest.

2.6 Terms and Conditions

The General Terms and Conditions (ref. Section 3) shall govern any Agreement issued as a result of this solicitation (RFB).

- A. All Bidders must comply with the requirements listed on any Notice to Bidders, Bid Requirements, Specifications/Service Requirements, and General Terms and Conditions herein. In the event there is a conflict expressed in this document, interpretation will be in the following order of precedence:
 - 1. Scope of Work
 - 2. General Terms and Conditions
 - 3. Bid Requirements
 - 4. Notice to Bidders
- B. Bidders may offer for UTMB's consideration alternate provisions to the Terms and Conditions. Alternates proposed must refer to the specific article(s) or section(s) concerned. General exceptions such as "company standard sales terms apply" or "will negotiate" are not acceptable. Bidder's silence as to the terms and conditions shall be construed as an indication of complete acceptance of these conditions as written.

Such additional or attached terms and conditions which are determined to be unacceptable to UTMB may result in disqualification of your bid. Examples include, but are not limited to, liability for payment of taxes, subjugation to the laws of another State, and limitations on remedies.

2.7 Submittal Checklist

FIRMS ARE INSTRUCTED TO COMPLETE, SIGN AND RETURN THE FOLLOWING DOCUMENTS AS A PART OF THEIR BID SUBMITTAL. **FAILURE TO RETURN THESE DOCUMENTS MAY SUBJECT YOUR BID TO DISQUALIFICATION.**

- Signed and Completed Notice to Bidders (ref. Section 1)
- Signed and Completed Bidder's Affirmation (ref. Section 5)
- Signed and Completed Pricing and Delivery Schedule (ref. Section 6)
- Responses to Bidder's Questionnaire (ref. Section 7)

SECTION 3

GENERAL TERMS AND CONDITIONS

3.1 General

These General Terms and Conditions shall be made a part of and govern any Purchase Order and/or Agreement, if any, resulting from this Request for Bid.

3.2 Definitions

Whenever the following terms are used in these General Terms and Conditions or in the other documents the intent and meaning shall be interpreted as follows:

Agreement shall mean the documents that form the agreement between UTMB and the Seller. The Agreement consists of the Conditions of the Agreement (General and Special Conditions), Scope of Work/Service Requirements, Pricing and Delivery Schedule, Execution of Offer, Bidder's Questionnaire, and all Addenda issued prior to and after the execution of the Agreement.

UTMB shall mean The University of Texas Medical Branch at Galveston, a component institution of The University of Texas System.

Bidder shall mean the individual, partnership, corporation, or other entity responding to this RFB.

Seller shall mean the individual, partnership, corporation, or other entity awarded a Agreement for removal, reduction, and disposal of dead trees caused from salt water intrusion under this RFB, in accordance with the terms, conditions, and requirements herein.

3.3 Entire Agreement

This Agreement, for all intents and purposes, is intended as the complete and exclusive statement of the agreement between UTMB and the Seller and supersede all prior or contemporaneous agreements, negotiations, course of prior dealings, or oral representations relating to the subject matter hereof.

The terms and conditions of any purchase order, agreements, amendments, modifications, or other documents submitted by either party which conflict with, or in any way purport to amend or add to any of the terms and conditions of this Agreement are specifically objected to by the other party and shall be of no force or effect, nor shall govern in any way the subject matter hereof, unless set forth in writing and signed by both parties.

3.4 Time of Performance

Time is of the essence in the rendering of services hereunder. Seller agrees to perform all obligations and render services set forth per this Agreement in accordance with the schedules herein and as mutually agreed upon between UTMB and Seller during the term of this Agreement.

3.5 Default

In the event that the Seller fails to carry out or comply with any of the terms and conditions of this Agreement with UTMB, UTMB may notify the Seller of such failure or default in writing and demand that the failure or default be remedied within ten (10) days; and in the event that the Seller fails to remedy such failure or default within the ten (10) day period, UTMB shall have the right to cancel this Agreement upon thirty (30) days written notice.

Without limiting the foregoing, the following shall constitute a material breach by the Seller, upon the occurrence of which the Seller shall immediately notify UTMB; the Seller ceases its business operation, makes a general assignment for the benefit of creditors, is adjudged bankrupt, or becomes insolvent.

The cancellation of this Agreement, under any circumstances whatsoever, shall not effect or relieve Seller from any obligation or liability that may have been incurred or will be incurred pursuant to this Agreement and such cancellation by UTMB shall not limit any other right or remedy available to UTMB at law or in equity.

3.6 Termination

A. For Convenience:

This Agreement may be terminated, without penalty, by UTMB without cause by giving thirty (30) days written notice of such termination to the Seller.

B. In no event shall such termination by UTMB as provided for under this Section, or Section 3.5, give rise to any liability on the part of UTMB including, but not limited to, any claims of Seller for compensation for anticipated profits, unabsorbed overhead, or interest on borrowing. UTMB's sole obligation hereunder is to pay Seller for products and/or services ordered and received prior to the date of termination.

C. Performance by UTMB under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of The University of Texas System (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then UTMB shall issue written notice to Seller and UTMB may terminate this Agreement without further duty or obligation hereunder. Seller acknowledges that appropriation, allotment, and allocation of funds are beyond the control of UTMB.

3.7 Warranties

In addition to all warranties established by law, Seller hereby warrants and agrees that:

A. All goods and services covered by this Agreement shall conform to the specifications, drawings, samples or other descriptions set forth in this Agreement or otherwise furnished or adopted by UTMB, and shall be merchantable fit for the purpose intended, of best quality and workmanship, and free from all defects. UTMB shall have the right of inspection and approval, and may, at Seller's expense, reject and return non-conforming goods or require re-performance of services which are not in compliance with the requirements of this Agreement. Defects shall not be deemed waived by UTMB's failure to notify Seller upon receipt of goods or completion of services, or by payment of invoice.

- B. All goods and/or services provided under this Agreement shall meet or exceed the Safety Standards established and promulgated under the Federal Occupational Safety and Health Administration (Public Law 91-596) and its regulations in effect or proposed as of the date of this Agreement.
- C. All goods delivered pursuant to this Agreement shall conform to standards established for such goods in accordance with any applicable federal, state or local laws and regulations, unless otherwise indicated in this Agreement.
- D. The use or sale of any goods delivered under this Agreement, or any part thereof, except goods produced to UTMB's specifications, drawings, samples, or other descriptions, does not infringe any existing patent, trademark, copyright, or other intellectual property right of third parties.

3.8 Payment

Seller shall submit itemized invoices for all products and/or services furnished in accordance with this Agreement. All charges for expenses which are permitted by this Agreement must be fully detailed and supported with itemized receipts. Invoices must reference the UTMB Purchase Order Number and must agree in every detail with the purchase order. Following receipt of a properly submitted invoice, payment will be remitted within thirty (30) days. In order to receive prompt payment within thirty (30) days of receipt of an invoice, please submit an invoice that includes, at a minimum, the following information:

- Seller's mailing and e-mail (if applicable) address
- Seller's telephone number
- Name and telephone number of a person designated to answer questions regarding the invoice
- UTMB's Purchase Order number
- UTMB's full name; "The University of Texas Medical Branch at Galveston"
- A valid Texas identification number (TIN) issued by the Comptroller of Public Accounts
- A description of goods and services, in sufficient detail to identify the order which relates to the invoice
- Invoices must agree in all respects with the Purchase Order, (i.e., quantity, price, catalog number, etc.)
- Other relevant information supporting and explaining the payment requested, if necessary by UTMB or its representatives.

UTMB reserves the right to change, modify, and/or add additional invoicing requirements, at any time, upon written notice to Seller.

Failure to submit invoices in accordance with the requirements herein may delay payment. All cash discounts offered will be taken if earned. Cash discount will be calculated from date of receipt of properly submitted invoice. UTMB's suggested payment terms are 2%/10 NET 30. UTMB as an Agency of the State of Texas qualifies for exemption from State and Local Sales and Use Taxes. Seller may claim exemption from payment of applicable State taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts. The State of Texas is exempt from all Federal Excise Taxes.

To the extent that Chapter 2251 of the *Texas Government Code*, as it may be amended from time to time ("Chapter 2251"), is applicable to Seller's invoice and is not preempted by other applicable law, the Seller may suspend performance under a Agreement for goods, services or construction, if UTMB as a State entity fails to pay undisputed amounts due under the Agreement within the time period specified in Chapter 2251.

Seller must give UTMB at least 10 days prior written notice to suspend (the “Suspension Notice”). Notwithstanding any other requirements for notices given by a Seller under this Agreement, if Seller intends to deliver written notice to UTMB pursuant to Section 2251.054, *Texas Government Code*, then Seller shall send that notice to UTMB to the address listed in Subsection 3.34.

3.9 Agreement Amendments

This Agreement may be amended within the Agreement period by mutual consent of the parties. No modification or amendment to this Agreement shall become valid unless in writing and signed by both parties. All correspondence regarding modifications or amendments to this Agreement must be forwarded to the UTMB Purchasing Department for prior review and approval.

3.10 Independent Contractor Status

For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Seller is an independent contractor and is not a state employee, partner, joint venturer, or agent of UTMB. Seller will not bind nor attempt to bind UTMB to any agreement or contract. As an independent contractor, Seller is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers' compensation insurance.

3.11 Compliance with Law

Seller is aware of, is fully informed about, and in full compliance with its obligations under existing applicable law and regulations, including Title VI of the Civil Rights Act of 1964, as amended (42 USC 2000(D)), Executive Order 11246, as amended (41 CFR 60-1 and 60-2), Vietnam Era Veterans Readjustment Act of 1974, as amended (41 CFR 60-250), Rehabilitation Act of 1973, as amended (41 CFR 60-741), Age Discrimination Act of 1975 (42 USC 6101 et seq.), Non-segregated Facilities (41 CFR 60-1), Omnibus Budget Reconciliation Provision, Section 952, Fair Labor Standards Act of 1938, Sections 6, 7, and 12, as amended, Immigration Reform and Control Act of 1986, and Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (PL 96-507), the Americans with Disabilities Act of 1990 (42 USC 12101 et seq.), the Civil Rights Act of 1991, University of Texas System Administration Policy UTS165, and all laws and regulations and executive orders as are applicable.

3.12 UTMB's Right to Audit

At any time during the term of this Agreement and for a period of four (4) years thereafter UTMB or a duly authorized audit representative of UTMB, The University of Texas System, or the State of Texas, at its expense and at reasonable times, reserves the Right to Audit Seller's records and books relevant to all services provided under this Agreement. In the event such an audit by UTMB reveals any errors/overpayments by UTMB, Seller shall refund UTMB the full amount of such overpayments within thirty (30) days of such audit findings, or UTMB, at its option, reserves the right to deduct such overpayments from any amounts UTMB is required to pay Seller under this Agreement or any Purchase Order.

3.13 State Auditor's Office

Seller understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, “Auditor”), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c),

73.115(c) and 74.008(c), *Texas Education Code*. Seller agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Seller will include this provision in all contracts with permitted subcontractors.

3.14 Access to Documents

To the extent applicable to this Agreement, in accordance with Section 1861(v)(I)(i) of the Social Security Act (42 U.S.C. 1395x) as amended, and the provisions of 42 CFR Section 420.300, et seq., Seller will allow, during and for a period of not less than four (4) years after the expiration or termination of this Agreement, access to this Agreement and its books, documents, and records; and contracts between Seller and its subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services, the Federal Emergency Management Agency (FEMA), and their duly authorized representatives.

3.15 Title and Risk of Loss

The title and risk of loss of the goods shall not pass to UTMB until UTMB actually receives, takes possession and accepts the goods at the point or points of delivery.

3.16 Acceptance of Products and Services

All products furnished and all services performed under this Agreement shall be to the satisfaction of UTMB and in accordance with the specifications, terms, and conditions of this Agreement. UTMB reserves the right to inspect the products furnished or the services performed, and to determine the quality, acceptability, and fitness of such products or services.

3.17 Sales and Use Tax

UTMB, as an agency of the State of Texas, qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provisions of the Texas Limited Sales, Excise, and Use Tax Act. The Seller may claim exemption from payment of applicable State taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts.

3.18 Certificate of Insurance

Seller shall, prior to commencement of work, provide UTMB with Certificates of Insurance in the below amounts and shall maintain such coverage in effect for the full duration of this Agreement.

- A. Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:
 - Each Accident \$1,000,000
 - Disease Each Employee \$1,000,000
 - Disease Policy Limit \$1,000,000

- B. Commercial General Liability Insurance with limits of not less than:
 - General Aggregate \$2,000,000
 - Products & Completed Operations Aggregate \$2,000,000
 - Personal & Advertising Injury \$1,000,000
 - Each Occurrence \$1,000,000
 - Fire Damage (any one fire) \$ 50,000

Medical Expenses (any one person) \$ 10,000

- C. Commercial Automobile Liability Insurance covering all owned, non--owned or hired automobiles, with coverage for at least \$1,000,000 Combined Single Limit Bodily Injury and Property Damage;

Certificates evidencing such coverage must be furnished to UTMB prior to the start of service. The Certificates shall be provided by the Insurance Carrier and name UTMB **and** Harbor Properties (ref Section 4, Item 4.6.6e) as holder and additionally insured. Certificates shall not be cancelable without thirty (30) days prior written notice.

3.19 Indemnification.

- A. To the fullest extent permitted by law, Seller shall and does hereby agree to indemnify, protect, defend with counsel approved by UTMB, and hold harmless UTMB and The University of Texas System, and their respective affiliated enterprises, regents, officers, directors, attorneys, employees, representatives and agents (collectively "Indemnitees") from and against all damages, losses, liens, causes of action, suits, judgments, expenses (including reasonable attorneys' fees), and other claims of any nature, kind, or description (collectively "Claims") by any person or entity, arising out of, caused by, or resulting from Seller's performance under this Agreement and which are caused in whole or in part by any negligent act, negligent omission or willful misconduct of Seller, anyone directly or indirectly employed by Seller or anyone for whose acts Seller may be liable. The provisions of this Section shall not be construed to eliminate or reduce any other indemnification or right which any Indemnitee has by law.
- B. In addition, Seller shall and does hereby agree to indemnify, protect, defend with counsel approved by UTMB, and hold harmless Indemnitees from and against all claims arising from infringement or alleged infringement of any patent, copyright, trademark or other proprietary interest arising by or out of the performance of services or the provision of goods by Seller pursuant to this Agreement, or the use by Seller, or by Indemnitees at the direction of Seller, of any article or material; provided, that, upon becoming aware of a suit or threat of suit for such infringement, UTMB shall promptly notify Seller and Seller shall be given full opportunity to negotiate a settlement. Seller does not warrant against infringement by reason of UTMB's design of articles or the use thereof in combination with other materials or in the operation of any process. In the event of litigation, UTMB agrees to cooperate reasonably with Seller and all parties shall be entitled, in connection with any such litigation, to be represented by counsel at their own expense.
- C. The indemnities contained herein shall survive the termination of this Agreement for any reason whatsoever.

3.20 Force Majeure

Neither UTMB nor the Seller shall be required to perform any term, condition, or covenant of this Agreement so long as such performance is delayed or prevented by acts of God, material or labor restriction by any governmental authority, civil riot, floods, hurricanes, or other natural disasters, or any other cause not reasonably within the control of UTMB or Seller, and which by the exercise of due diligence UTMB or the Seller is unable, wholly or in part, to prevent or overcome.

3.21 Other Benefits

It is understood and agreed that no benefits, payments or considerations received by Seller for the performance of services associated with and pertinent to this Agreement shall accrue, directly or indirectly, to any employees, elected or appointed officers or representatives, or any other person identified as agents of, or who are by definition an employee of, the State.

3.22 Non-Disclosure

Seller and UTMB acknowledge that they or their employees may, in the performance of this Agreement, come into the possession of proprietary or confidential information owned by or in the possession of the other. Neither party shall use any such information for its own benefit or make such information available to any person, firm, corporation, or other organization, whether or not directly or indirectly affiliated with Seller or UTMB, unless required by law. Each party shall also sign any non-disclosure agreements reasonably required by the other party and obtain such agreements from their representatives and/or employees as necessary.

3.23 Publicity

Seller agrees that it shall not publicize this Agreement or disclose, confirm or deny any details thereof to third parties or use any photographs or video recordings of UTMB's employees or patients or use UTMB's name in connection with any sales promotion or publicity event without the prior express written approval of UTMB.

3.24 Severability

If one or more provisions of this Agreement, or the application of any provision to any party or circumstance, is held invalid, unenforceable, or illegal in any respect, the remainder of this Agreement and the application of the provision to other parties or circumstances shall remain valid and in full force and effect.

3.25 Non-Waiver of Defaults

Any failure of UTMB at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms and conditions of this Agreement, or to exercise a right hereunder, shall not constitute a waiver of such terms, conditions, or rights, and shall not affect or impair same, or the right of UTMB at any time to avail itself of same.

3.26 Assignment

Neither this Agreement, nor any rights, obligations of moneys due hereunder are assignable or transferable (as security for advances or otherwise) unless agreed to in writing by UTMB. Seller shall not subcontract any portion of services encompassed by this Agreement without UTMB's prior written approval. UTMB shall not be required to recognize any assignment or subcontract made without its prior written approval, and any such assignment by Seller shall be wholly void and ineffective for all purposes unless made in conformity with this Section.

3.27 Assignment of Overcharge Claims

Seller hereby assigns to UTMB any and all claims for overcharges associated with this Agreement arising under the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et seq. (1973), or arising

under the antitrust laws of the State of Texas, Texas Business and Commerce Code Annotated, Sec. 15.01, et seq. (1967).

3.28 Texas Public Information Act

Seller is hereby notified that UTMB strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information.

Upon execution of a final Agreement, UTMB will consider all information, documentation, and other materials requested to be submitted, to be of a non-confidential and non-proprietary nature and, therefore, subject to public disclosure under the *Texas Public Information Act (Texas Government Code, Chapter 552.001, et seq.)*. Seller will be advised of a request for public information that implicates their materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General. Certain information may be protected from release under Sections 552.101, 552.110, 552.113, and 552.131, *Texas Government Code*.

3.29 Freedom of Access and Use of Facilities

Seller's employees shall have reasonable and free access to use only those facilities of UTMB that are necessary to perform services under this Agreement and shall have no right of access to any other facilities of UTMB.

- A. If Seller's employees, agents, and/or subcontractors are performing work on UTMB's premises for a period longer than three (3) days or twenty (20) hours, Seller will be subject to UTMB's Security Requirements, which will require Seller to perform a security clearance check and a urine drug test on each individual. Please contact UTMB's Purchasing Compliance Officer at 409.747.8000 if your work meets this criteria.
- B. If Seller's employees, agents, and/or subcontractors are performing work on UTMB's premises for a period shorter than three (3) days or twenty (20) hours, they must be escorted by a UTMB employee at all times.

3.30 Observance of UTMB Rules and Regulations

Seller agrees that at all times its employees will observe and comply with all regulations of the facilities, including but not limited to, no smoking, consideration for patients and their families, and parking and security regulations.

Care for UTMB patients is the first priority. When patients are being transported in UTMB elevators, Seller's employees, agents, representatives, and subcontractors should exit the elevator and wait for the next available one to arrive.

3.31 Ethics Matters; No Financial Interest

Seller and its employees, agents, representatives and subcontractors have read and understand UTMB's Conflicts of Interest Policy available at <http://research.utmb.edu/coi/default.shtm>, UTMB's Standards of Conduct Guide available at http://intranet.utmb.edu/compliance/SOCG_2005_3rdEd/SOC_Guide2005.pdf, and applicable state ethics laws and rules available at www.utsystem.edu/ogc/ethics. Neither Seller nor its employees, agents, representatives or subcontractors will assist or cause UTMB employees to violate UTMB's Conflicts of Interest Policy, provisions described by UTMB's Standards of Conduct Guide, or applicable state ethics laws or rules. Seller represents and warrants that no

member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

3.32 Recall Notice

Seller shall, immediately upon discovery of same, advise UTMB of any or all required replacement/modifications to equipment or component part thereof or withdrawal of product by reason of safety hazard or recall regardless of the nature of same. Any verbal notification must be confirmed in writing within twenty-four (24) hours of such verbal notification. All such formal notices will be submitted to the following addresses:

The University of Texas Medical Branch at Galveston
Attn.: Chief Purchasing Agent
301 University Blvd.
Galveston, TX 77555-0905
Tel.: (409) 747-8000 Fax: (281) 554-5368

The University of Texas Medical Branch at Galveston
Attn.: Risk Management
301 University Blvd.
Galveston, TX 77555-0495
Tel.: (409) 742-4775 Fax: (409) 742-6897

3.33 Other Liabilities

The individuals signing on behalf of UTMB and Seller shall not be personally liable for the performance of any of the terms of this Agreement, provided however, that they warrant their authority to sign on behalf of UTMB and Seller. No member, individually or collectively, of UTMB or the Board of Regents of the University of Texas System ("UT System"), and no officer or director of Seller incurs or assumes any individual or personal liability by the execution of this Agreement or by reason of default in the performance of any of the terms hereof. All such liability of the employees of UT System and officers and directors of Seller, as such, is released as a condition of and in consideration of the execution of this Agreement.

3.34 Section Headings

All section headings are for convenience of reference only and are not intended to define or limit the scope of any provisions of this Agreement.

3.35 Execution

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Agreement. It is also agreed that separate counterparts of this Agreement may separately be executed by the parties all with the same force and effect as if the same counterpart had been executed by all parties.

3.36 Notices

Any notices required or permitted to be given shall be in writing and effective upon receipt and shall be sent by certified mail, return receipt requested, postage pre-paid, addressed as follows:

If to Seller, to the Seller's last known mailing address.

If to UTMB: The University of Texas Medical Branch at Galveston
Attn.: Chief Purchasing Agent
301 University Blvd., Mail Route 0905
Galveston, Texas 77555-0905

cc: The University of Texas Medical Branch at Galveston
Attn.: Director, Legal Services
301 University Blvd., Mail Route 0171
Galveston, Texas 77555-0171

3.37 Governing Law and Venue

Galveston County, Texas, shall be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

3.38 Breach of Contract Claims

A. To the extent that Chapter 2260, *Texas Government Code*, as it may be amended from time to time ("**Chapter 2260**"), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 will be used, as further described herein, by UTMB and Seller to attempt to resolve any claim for breach of contract made by Seller:

1. Seller's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business will be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Seller will submit written notice, as required by subchapter B of Chapter 2260, to UTMB in accordance with the notice provisions in this Agreement. Seller's notice will specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific Agreement provision that UTMB allegedly breached, the amount of damages Seller seeks, and the method used to calculate the damages. Compliance by Seller with subchapter B of Chapter 2260 is a required prerequisite to Seller's filing of a contested case proceeding under subchapter C of Chapter 2260. The chief business officer of UTMB, or another officer of UTMB as may be designated from time to time by UTMB by written notice to Seller in accordance with the notice provisions in this Agreement, will examine Seller's claim and any counterclaim and negotiate with Seller in an effort to resolve the claims.
2. If the parties are unable to resolve their disputes under subsection (A)(1), the contested case process provided in subchapter C of Chapter 2260 is Seller's sole and exclusive process for seeking a remedy for any and all of Seller's claims for breach of this Agreement by UTMB.
3. Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107, *Texas Civil Practices and Remedies Code*. The parties hereto specifically agree that (i) neither the execution of this Agreement by UTMB nor any other conduct, action or inaction of any representative of UTMB relating to this Agreement constitutes or is intended to constitute a

waiver of UTMB's or the state's sovereign immunity to suit and (ii) UTMB has not waived its right to seek redress in the courts.

- B. The submission, processing and resolution of Seller's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, thereafter enacted or subsequently amended.
- C. UTMB and Seller agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.

3.39 Access by Individuals with Disabilities

Seller represents and warrants ("EIR Accessibility Warranty") that the electronic and information resources and all associated information, documentation, and support that it provides to UTMB under this Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the *Texas Administrative Code* and Title 1, Chapter 206, Rule 206.70 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M of the *Texas Government Code*.) To the extent Seller becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Seller represents and warrants that it will, at no cost to UTMB, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that Seller is unable to do so, then UTMB may terminate this Agreement and Seller will refund to UTMB all amounts UTMB has paid under this Agreement within thirty (30) days after the termination date.

3.40 Acknowledgment of HIPAA Obligation and Other Regulations Implementing the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §1320(d) ("HIPAA"))

To the extent Seller comes into contact with information considered Individually Identifiable Health Information as defined by 42 U.S.C. §1320(d), Protected Health Information or Electronic Protected Health Information (collectively known as "Protected Information") as regulated by the Department of Health and Human Services (DHHS) through the adoption of standards, 45 CFR Parts 160 and 164 (Privacy Rule) and 45 CFR Parts 160, 162 and 164 (Security Rule), collectively referred to as "the HIPAA Rules," Seller agrees to keep private and to secure any information considered Protected Information in accordance with federal law.

- A. Seller agrees to only use and disclose Protected Information as required to perform the services outlined in this Agreement. Seller may use and disclose Protected Information for the proper management and administration of the Seller's operations and for data aggregation services to the extent permitted by the HIPAA Rules.
- B. Seller will not use or further disclose Protected Information other than as permitted or required under this Agreement or as required by law.
- C. Seller will use appropriate safeguards to prevent the use or disclosure of Protected Information for any reason other than as provided by this Agreement. Seller shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic Protected Information that it creates, receives, maintains or transmits on behalf of UTMB.
- D. Seller agrees to promptly notify UTMB of any use or disclosure of Protected Information not provided for in this Agreement of which it becomes aware. Contactor shall report to UTMB any instances, including security incidents, of which it is aware in which

Protected Information is used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the HIPAA Rules.

- E. Seller shall require any agents or subcontractors who receive Protected Information to be bound by the same restrictions and conditions outlined in this Agreement. Additionally, Seller shall ensure that any agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity and availability of electronic Protected Information that Seller creates, receives, maintains, or transmits on behalf of UTMB.
- F. To the extent it is determined Seller maintains a Designated Record Set, Seller agrees to follow 45 CFR §164.524 (Access of Individuals to PHI), 164.526 (Amendment of PHI) and 164.528 (Accounting of Disclosures of PHI) of the HIPAA Privacy Rules.
- G. Seller agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from UTMB available to the Secretary of Health and Human Services or the Secretary's designee for purposes of determining UTMB's compliance with the HIPAA Privacy Regulations.
- H. After completion and/or termination of this Agreement, Seller agrees to return or destroy all Protected Information, if feasible, and, if not feasible, Seller agrees to continue to protect the Protected Information from wrongful uses and disclosures.
- I. Seller understands that UTMB may terminate this Agreement immediately if UTMB determines Seller violated a material term of this Agreement and Seller's actions are not successful in remedying the breach. If termination is not feasible UTMB may report the problem to the Secretary of Health and Human Services.
- J. Seller may use and disclose de-identified Protected Information if UTMB approves of the use of de-identified Protected Information and the Protected Information is de-identified in compliance with the HIPAA Rules.
- K. Seller shall ensure that all uses and disclosures of Protected Information are subject to the principle of "minimum necessary use and disclosure," i.e., that only Protected Information that is the minimum necessary to accomplish the intended purpose of the use, or disclosure is used or disclosed.

3.41 Undocumented Workers

The *Immigration and Nationality Act* (8 *United States Code* 1324a) ("**Immigration Act**") makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form ("**I-9 Form**") as the document to be used for employment eligibility verification (8 *Code of Federal Regulations* 274a). Among other things, Seller is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Seller employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, UTMB may terminate this Agreement in accordance with Section

VIII. Seller represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

SECTION 4
SCOPE OF WORK

4.1 GENERAL

University of Texas Medical Branch at Galveston (UTMB) requests bids from qualified and experienced firms for removal, reduction, and disposal of dead trees caused from salt water intrusion due to Hurricane Ike within the University of Texas Medical Branch (UTMB) campus meeting the following minimum specifications stated in this Section.

4.2 SCOPE OF WORK

4.2.1 The Seller shall provide debris removal; reduction and disposal of all Federal Emergency Management Agency (FEMA) declared eligible Salt Water inundated trees from the UTMB campus in accordance to FEMA rules and regulations as stated in the latest FEMA P-325, and to remove from cradle to grave all FEMA declared eligible stumps.

A. Each tree that will be removed has been placed in a zone and assigned a tree number and GPS coordinates. This information will be provided to the Seller upon award. A map outlining the area where the trees are located are attached as Attachment No. 1.

4.2.2 The SWK (Salt Water Kill) debris shall be taken to the approved on campus dumpsites as indicated. All necessary contracting and hauling permits shall be obtained by the Seller. UTMB will be responsible for permits for on campus facilities if required.

4.2.3 The size and quantity of SWK debris that will be removed are detailed in Section 6, Pricing Schedule. In the event the actual number of trees removed varies, the total cost will be adjusted based on individual costs for each size of tree, root ball removal or stump grinding. .

4.2.4 The Seller shall document the current conditions of all roadways, sidewalks, turf grass, and all structures to remain in the debris removal area. In addition, all roadways along the haul routes shall be documented. A representative of the University of Texas Medical Branch or designee shall be present during this inspection. The Seller shall provide photographic and or video documentation. The documentation shall be submitted to UTMB prior to beginning the work.

4.2.5 The work shall consist of cutting, removing, and reducing trees marked as SWK (Salt Water Kills) from the intrusion of salt water from Hurricane Ike on UTMB property only including the Right of Way (ROW) of streets and roads. All work shall be in strict accordance with the latest FEMA guidelines. Seller shall:

- A. Cut SWK's to a flush cut at the ground level as stated in the FEMA publication 325;
- B. At UTMB's discretion approximately 4-5 trees will be cut down and reduced to logs, and will not be reduced to chipped. Seller will haul these logs to the UTMB mulch yard.
- C. Haul all SWK's (except those logs mentioned above) to the Chipping Site and chip SWK to an approximate 2" particle size.
- D. Haul finished mulch to the UTMB mulch yard.

- E. Grind out stumps, except from Palm trees, to allow for possible replant of trees in the future.
- F. Fill any holes present as a result of uprooted trees or stump removal shall be filled to ground level. Any and all remaining root-balls need to be removed. All non-Palm tree stumps left from the flush cuts are to be ground out. The debris left from the grinding out of stumps shall not exceed 2" above grade. The remaining debris may be added with the rest of the tree debris flow.
- G. Sell shall not cut down or trim any trees that have not been marked by UTMB or it's designated representative.

4.2.6 To avoid ruts in the turf, Seller shall put down a minimum ¾" thick plywood (not wafer board) prior to driving equipment on turfgrass. If Seller's equipment causes any ruts, Seller must fill the rut and replace the turfgrass.

4.2.7 The Seller shall be responsible for repairing all damages as a result of negligence. The Seller shall be responsible for filling to grade with like material all surface damage, such as rutting and pavement damage, caused by the Seller's equipment during debris removal. The Seller shall repair all damage to existing grade, road shoulders, sidewalks, drainage structures, trees, shrubs, grassed areas, etc., caused by the Seller's equipment and personnel. The Seller shall preserve and protect all existing structures, infrastructures, vegetation, etc., on or adjacent to the area of work. If a damage claim is filed, the Seller shall contact UTMB within two (2) days of receiving said claim. The Seller shall provide the University of Texas Medical Branch with a daily report outlining the status of all damage concerns and claims.

4.2.8 Ineligible debris as defined by FEMA shall not be loaded, hauled, or dumped under this contract. UTMB recognizes that stumps are defined by FEMA as ineligible debris. The cost for this service will be UTMB's responsibility. Seller shall inform the UTMB Project Manager if they believe and SWK tree is FEMA ineligible debris.

4.2.9 The Seller is liable for all unmarked trees and/or debris handled during the life of this contract. The University of Texas Medical Branch designee shall be immediately notified of any ineligible debris placed at the right of way or on grounds for collection. The Seller shall grind out any and all stumps on site.

4.2.10 No debris shall be burned under this contract.

4.2.11 The Seller shall not move from one designated work area to another designated work area without prior approval from the University of Texas Medical Branch designee.

4.2.12 Limbs are considered eligible debris and are defined as limbs greater than two inches in diameter that are still hanging in the tree and are threatening a public use area, such as a trail, sidewalk, road, etc. The trees with these limbs will be marked. Holes present as a result of uprooted trees or stump removal shall be filled to ground level. The Seller shall not cut down or trim any trees that have not been marked by the University of Texas Medical Branch or its designated Horticulturalist representative.

4.2.13 No tree trimming and cutting can be performed until authorized in writing by the University of Texas Medical Branch. Any individuals trimming or cutting trees must first obtain any needed City of Galveston and/or Texas Arborist Certifications.

4.2.14 Sellers shall note that much of the project will occur in high pedestrian locations. The Sellers will clearly and safely mark and cordon off work areas to protect the pedestrian and vehicular traffic. If additional cones will be needed, the Seller may notify the UTMB

representative as soon as possible. The Sellers should exercise due care to minimize any damages to trees, shrubs, landscaping and general property. The Seller shall repair any damages caused by the Seller's equipment in a timely manner at no expense to the University of Texas Medical Branch. The debris work area shall be left clear of debris and cleaned, as reasonably and practical under the conditions of this project.

4.2.15 The Seller shall use equipment and perform work in a manner to prevent damages to the University of Texas Medical Branch infrastructures, facilities, and adjacent ROW's, including all landscaped areas. The Seller shall repair any damages caused by the Seller's equipment in a timely manner at no expense to the University of Texas Medical Branch. All equipment shall be approved by the University prior to use. Any damage to private property, sidewalks, turf grass, curbs, or streets shall be repaired at the expense of the Seller.

4.2.16 The Seller shall conduct the work so as not to interfere with the disaster response and recovery activities of federal, state, and local governments or agencies, or of any public utilities.

4.2.17 The University of Texas Medical Branch and its contracting agents reserve the right to inspect the site and verify quantities and review operations at any time.

4.2.18 All work shall be accomplished in a safe manner in accordance with the University of Texas Medical Branch and Occupational Safety and Health Administration (OSHA) standards.

4.2.19 The Seller should use mechanical equipment to load and reasonably compact debris into trucks and trailers.

4.3 **DEBRIS CLASSIFICATIONS**

4.3.1 Eligible Debris: Eligible debris for the purpose of this contract is considered all trees that were killed due to salt water inundation from Hurricane Ike which is located within the University of Texas Medical Branch property to include its right of way. Salt Water Kill tree sizes are to be determined by Diameter Breast Height (DBH). The Seller will only be paid for items that have been determined eligible by FEMA according to their rules, regulations, and fact sheets.

4.3.2 Stumps: Stumps have not been approved by FEMA, however, UTMB will pay for the grinding of all stumps left from the cutting of SWK trees.

4.4 **PERFORMANCE SCHEDULE**

4.4.1 Work to be performed according to the schedule provided by the Seller in response to this RFB or all work is to be performed on the weekends. Work schedule will be determined upon award.

4.4.2 All work must be complete by no later than January 31, 2010. Maximum allowable time for completion shall be 30 calendar days once work begins (exceptions will be made for inclement weather). Work is "complete" once all work described in this specification has been approved by the UTMB Project Coordinator.

4.5 **EQUIPMENT**

4.5.1 All trucks and other equipment must be in compliance with all applicable federal, state, and local rules and regulations. All trucks and other equipment shall be equipped with back up alarms. Sideboards or other extensions to the bed are allowable provided they meet all applicable rules and regulations, cover the front and both sides, and are constructed in a manner to withstand severe operating conditions. All extensions are subject to acceptance or rejection by the University of Texas Medical Branch. The Seller is responsible for ensuring all loading and

transport equipment complies with state and local laws. The Seller shall inspect all equipment prior to use.

4.5.4 Trucks or equipment which are designated for use under this contract shall not be used for any other work during the working hours of this contract. The Seller shall not solicit work from private citizens or others to be performed in the designated work area during the period of this contract. Under no circumstances will the Seller mix debris hauled for others with debris hauled under this contract.

4.6 **CHIPPING SITE** A site located across Harborside Drive from the UTMB campus has been designated at the Chipping Site. The GPS coordinates for this site are 29.31419/-94.780444. The site is indicated on map (Ref. Attachment No. 1). This location is owned by Harbor Properties and is being leased to UTMB for the purpose of disposal of SWK debris. The Seller is responsible for operating the disposal site and responsible for all operations of said disposal site, to include but not limited to:

4.6.1 Chipping of all eligible SWK debris to a finish state then hauling finish chips to final location: UTMB's mulch yard.

4.6.2. Traffic control, dust control, erosion control, fire protection, on-site roadway maintenance, storm water management, and security and safety measures;

4.6.3. Internal road network to allow for separate ingress and egress from the site;

4.6.4. Site management.

4.6.5. Maintaining an additional insurance policy in the amounts indicated in Section 3, Item 3.18. This policy must state Harbor Properties as an additional named insured.

4.6.6. The Seller shall manage the site and not accept debris collected under other contracts or by other Sellers and the Seller will not be paid for debris delivered to the debris site that was brought in by others. The Seller will not be paid for hauling costs for debris delivered to the chipping site by others. The Seller will NOT accept any debris brought to the chipping site by private Commercial businesses. The Seller shall direct traffic entering and leaving the site, and shall direct dumping operations at the site. The Seller will maintain all of the required documentation required under this contract.

4.7 **UTMB MULCH YARD**

Finished mulch shall be hauled and dumped at the UTMB Mulch Yard located on Barracuda Avenue between 6th Street and Holiday Drive (ref to map, Attachment No. 1). Maintenance and control of this property is the responsibility of UTMB.

4.8 **REPORTING**

4.8.1 The Seller shall submit the following reports to UTMB on a daily basis:

A. A report lists the tree number that was cut down and indicate if the stump was also ground out.

B. A report outlining the status of all damage concerns and claims.

4.9 **SECURITY CLEARANCE REQUIREMENTS**

If awarded a Contract as a result of this solicitation, a Security Clearance Check and a Urine Drug Test will have to be performed for each of Seller's employees, agents and/or subcontractor's

personnel performing work on UTMB's premises. The type and scope of the Security Clearance Check and Urine Drug Test is indicated in the Seller's Security Clearance Requirements incorporated herein as Attachment No. 2.

4.10 **OTHER CONSIDERATIONS**

4.10.1 The Seller shall supervise and direct the work, using skillful labor and proper equipment for all tasks. Seller shall have on-site at all times a supervisor who will direct the work and will be the primary contact between UTMB and Seller while the work is being performed. The supervisor shall be fluent in the English language.

4.10.2 Safety of the Seller's personnel and equipment is the responsibility of the Seller. Additionally, the Seller shall pay for all materials, personnel, taxes, and fees necessary to perform under the terms of this contract.

4.10.3 The Seller shall be duly licensed in accordance with city, state, and county statutory requirements to perform the work.

4.10.4 The Seller shall be responsible for taking corrective action in response to any notices of violations issued as a result of the Seller's or any sub-contractor's actions or operations during the performance of this contract. Corrections for any such violations shall be at no additional cost to the University of Texas Medical Branch.

4.10.5 The Seller shall be responsible for control of pedestrian and vehicular traffic in the work area. The Seller shall coordinate with the University of Texas Medical Branch with any possible street and/or parking lot closures. Areas that need to be cordoned off must be done 24 hours in advance of scheduled work. The Seller shall provide all flag persons, signs, equipment, and other devices necessary to meet federal, state, and local requirements. The traffic control personnel and equipment shall be in addition to the personnel and equipment required in other parts of this contract. At a minimum, one flag person should be posted at each approach to the work area. Work shall be accomplished in a safe manner in accordance with University of Texas Medical Branch and OSHA standards. Seller to provide all necessary safety equipment to include cones, and other items to cordon off streets and other areas.

4.10.6 The Seller is responsible for obtaining all applicable environmental and regulatory permits prior to the Seller commencing operations.

4.10.7 The Seller is responsible for dust control. The Seller shall be in compliance with all state and local requirements for dust control.

4.10.8 The University of Texas Medical Branch may suspend Seller operations due to inclement weather. The performance period may be extended for weather delays.

4.10.9 The daily work times should take into consideration the traffic flow of students and faculty arriving and departing campus. UTMB and its representatives reserve the right to modify the Seller's work schedule to solve any traffic congestions or issues.

4.10.10 The Seller and its employees shall follow all of the University of Texas Medical Branch rules and regulations to include but not limited to the parking and smoke free campus rules and regulations.

4.10.11 After work completed, Seller may be required to return to UTMB to meet with FEMA representatives concerning work performed as a result of this RFB. There shall be no charge to UTMB for this requirement.

4.11 **MISCELLANEOUS PROVISIONS**

4.11.1. Personnel- Seller will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Seller will cause all persons connected with the Seller directly in charge of the Work are duly registered and/or licensed under all applicable federal, state and local, laws, regulations, and ordinances. Seller will assign to the Project a designated representative who will be responsible for the administration and coordination of the Work. Seller will furnish efficient business administration and coordination and perform the Work in an expeditious and economical manner consistent with the interests of UTMB.

4.11.2 Seller represents, warrants and agrees that (a) it will use commercially reasonable efforts to perform the Work in a good and workmanlike manner and in accordance with commercially reasonable standards of Seller's profession or business, and (b) all of the Work to be performed will be of the quality that prevails among similar businesses engaged in providing similar services in major United States urban areas under the same or similar circumstances.

4.11.3 Seller will call to UTMB's attention in writing all information in any materials supplied to Seller (by UTMB or any other party) that Seller regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished.

4.11.4 Seller warrants and agrees that the Work will be accurate and free from any material defects. Seller's duties and obligations under this Agreement will at no time be in any way diminished by reason of any approval by UTMB nor will Seller be released from any liability by reason of any approval by UTMB, it being agreed that UTMB at all times is relying upon Seller's skill and knowledge in performing the Work.

4.11.5 Seller will, at its own cost, correct all material defects in the Work as soon as practical after Seller becomes aware of the defects. If Seller fails to correct material defects in the Work within a reasonable time, then UTMB may correct the defective Work at Seller's expense. This remedy is in addition to, and not in substitution for, any other remedy for defective Work that UTMB may have at law or in equity.

4.12 **UTMB PROJECT MANAGER(S)**

Upon award , UTMB will designate a project manager (s) who will be the primary contact for all work performed under this contract.

4.13 **INVOICING INSTRUCTIONS**

4.13.1 Seller shall submit an invoice for the work after work has been completed.

4.13.2 Seller shall submit two (2) invoices; one for the removal of the SWK trees and one for stump grinding.

4.13.3 Refer to Section 3.8 for additional invoicing instructions.

SECTION 5
BIDDER'S AFFIRMATION
RFB NO.: 10-22

THIS SHEET MUST BE COMPLETED, SIGNED, AND RETURNED WITH BIDDER'S BID. FAILURE TO SIGN AND RETURN THIS SHEET WILL RESULT IN THE REJECTION OF YOUR BID.

1. By signature hereon, Bidder represents and warrants the following:
 - A. Bidder acknowledges and agrees that (1) this RFB is a solicitation for a bid and is not a contract or an offer to contract; (2) the submission of a bid by Bidder in response to this RFB will not create a contract between UTMB and Bidder; (3) UTMB has made no representation or warranty, written or oral, that one or more contracts with UTMB will be awarded under this RFB; and (4) Bidder will bear, as its sole risk and responsibility, any cost arising from Bidder's preparation of a response to this RFB.
 - B. Bidder is a reputable company that is lawfully and regularly engaged in providing products and/or performing the services.
 - C. Bidder has the necessary experience, knowledge, abilities, skills, and resources to provide the products and/or perform the services.
 - D. Bidder is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances.
 - E. Bidder understands (i) the requirements and specifications set forth in this RFB and (ii) the terms and conditions set forth under which Bidder will be required to operate.
 - F. If selected by UTMB, Bidder will not delegate any of its duties or responsibilities under this RFB or any resulting order to any subcontractor, except as expressly provided in the order.
 - G. If selected by UTMB, Bidder will maintain any insurance coverage as required by the order and/or Agreement during the term thereof.
 - H. All statements, information and representations prepared and submitted in response to this RFB are current, complete, true and accurate. Bidder acknowledges that UTMB will rely on such statements, information and representations in selecting the successful Bidder. If selected by UTMB, Bidder will notify UTMB immediately of any material change in any matters with regard to which Bidder has made a statement or representation or provided information.
 - I. Bidder will defend, indemnify, and hold harmless UTMB, The University of Texas System, the State of Texas, and all of their regents, officers, agents and employees, from and against all claims, actions, suits, demands, costs (including, but not limited to reasonable attorneys' fees), damages, and liabilities, arising out of, connected with, or resulting from any negligent acts or omissions or willful misconduct of Bidder or any agent, employee, subcontractor, or supplier of Bidder in the execution or performance of any order, contract or agreement resulting from this RFB.
 - J. Pursuant to Sections 2107.008 and 2252.903, *Government Code*, any payments owing to Bidder under any order, contract or agreement resulting from this RFB may be applied directly to any debt or delinquency that Bidder owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

- K. Bidder offers and agrees to provide the products and/or furnish the services to UTMB and comply with all terms, conditions, requirements and specifications set forth in this RFB.
- L. Bidder affirms that it has not given or offered to give, nor does Bidder intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with its submitted bid.
- M. A corporate Bidder certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171, *Tax Code*, or that the corporate Bidder is exempt from the payment of such taxes, or that the corporate Bidder is an out-of-state corporation that is not subject to the Texas Franchise Tax, whichever is applicable. A false certification will be deemed a material breach of contract and, at UTMB's option, may result in termination of any resulting order, contract or agreement.
- N. Bidder hereby certifies that neither Bidder nor any firm, corporation, partnership or institution represented by Bidder, or anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in Section 15.01, et seq., *Business and Commerce Code*, or the Federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
- O. Bidder certifies that the individual signing this document and the documents made a part of this RFB, is authorized to sign such documents on behalf of Bidder and to bind Bidder under any agreements and other contractual arrangements that may result from the submission of Bidder's bid.
- P. Bidder certifies as follows:
- "Under Section 231.006, *Family Code*, relating to child support, Bidder certifies that the individual or business entity named in the Bidder's bid is not ineligible to receive the specified award and acknowledges that any agreements or other contractual arrangements resulting from this RFB may be terminated if this certification is inaccurate."
- Q. Bidder certifies that (i) no relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Bidder that is a sole proprietorship, the officers or directors of any Bidder that is a corporation, the partners of any Bidder that is a partnership, the joint venturers of any Bidder that is a joint venture or the members or managers of any Bidder that is a limited liability company, on one hand, and an employee of any component of The University of Texas System, on the other hand, other than the relationships which have been previously disclosed to UTMB in writing and (ii) Bidder has not been an employee of any component institution of The University of Texas System within the immediate twelve (12) months prior to the Submittal Deadline. All disclosures by Bidder in connection with this certification will be subject to administrative review and approval before UTMB enters into a order, contract or agreement with Bidder.
- R. By signature hereon, Bidder certifies that in accordance with Section 2155.004, *Government Code*, no compensation has been received for its participation in the preparation of the requirements or specifications for this RFB. In addition, Bidder certifies that an award of a Agreement to Bidder will not violate Section 2155.006, *Government Code*, prohibiting UTMB from entering into a Agreement that involves financial participation by a person who, during the previous five years, has been convicted of violating federal law or assessed a penalty in a federal civil or

administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Pursuant to Sections 2155.004 and 2155.006, *Government Code*, Bidder certifies that Bidder is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if these certifications are inaccurate.

- S. Bidder certifies its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- T. Bidder represents and warrants that all products and services offered to UTMB in response to this RFB meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and the *Texas Hazard Communication Act*, Chapter 502, *Health and Safety Code*, and all related regulations in effect or proposed as of the date of this RFB.
- U. Bidder certifies that, except for restrooms and wash rooms and one (1) or more lactation rooms each of which is segregated on the basis of sex: (1) it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained; (2) it will not maintain or provide for its employees any segregated facilities at any of its establishments; and (3) it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. A breach of this certification is a violation of the Equal Opportunity clause. The term “segregated facilities” means any waiting rooms, work areas, rest rooms and wash rooms, entertainment areas, and transportation or housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin, because of habit, local custom, or otherwise. Bidder further agrees that, except where it has contracts prior to the award with subcontractors exceeding \$10,000.00 which are not exempt from the provisions of the Equal Opportunity clause, Bidder will retain the certifications for each one of its subcontractors in Bidder’s files, and that it will forward the following notice to all proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES - A Certification on Nonsegregated Facilities must be submitted prior to the award of any subcontract exceeding \$10,000.00 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e. quarterly, semiannually, or annually).

Bidder understands that the penalty for making false statements regarding the subject matters of this Section is prescribed in 18 U.S.C. 1001.

- V. Bidder confirms that neither Bidder nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from State of Texas or United States (“U.S.”) federal government procurement or non-procurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs (<http://www.epls.gov/>) issued by the U.S. General Services Administration. “**Principals**” means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Bidder will provide immediate written notification to UTMB if, at any time prior to award, Bidder learns that this certification

was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when UTMB executes this Agreement. If it is later determined that Bidder knowingly rendered an erroneous certification, in addition to the other remedies available to UTMB, UTMB may terminate this Agreement for default by Bidder.

- W. Bidder acknowledges that UTMB is prohibited by federal regulations from allowing any employee, representative, agent or subcontractor of Bidder to work on site at UTMB's premises or facilities if that individual is not eligible to work on federal healthcare programs including Medicare, Medicaid, or other similar federal programs. Therefore, Bidder will not assign any employee, representative, agent or subcontractor that appears on the List of Excluded Individuals issued by the United States Office of the Inspector General ("OIG") to work on site at UTMB's premises or facilities. Bidder will perform an OIG sanctions check quarterly on each of its employees, representatives, agents, and subcontractors during the time the employees, representatives, agents, or subcontractors are assigned to work on site at UTMB's premises or facilities. Bidder acknowledges that UTMB will require immediate removal of any employee, representative, agent, or subcontractor of Bidder assigned to work at UTMB's premises or facilities if the employee, representative, agent, or subcontractor is found to be on the OIG's List of Excluded Individuals. The OIG's List of Excluded Individuals may be accessed through the following Internet website:
<http://www.dhhs.gov/progorg/oig/cumsan/index.htm>
 - X. Bidder covenants and agrees that as required by Section 2155.4441, *Texas Government Code*, in performing its duties and obligations under any resulting order, contract or agreement, Bidder shall purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
 - Y. Bidder will and has disclosed, as part of its bid, any exceptions to the certifications stated herein. All such disclosures will be subject to administrative review and approval prior to the time UTMB makes an award or enters into any order, contract or agreement with Bidder.
2. By signature hereon, Bidder certifies as follows:

"Under Section 231.006, *Family Code*, relating to child support, Bidder certifies that the individual or business entity named in the Bidder's bid is not ineligible to receive the specified Agreement award and acknowledges that any agreements or other contractual arrangements resulting from this RFB may be terminated if this certification is inaccurate."

NOTICE: WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER SECTIONS 552.021 AND 552.023, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER SECTION 559.004, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

Complete the following:

VIN No: _____

FEI No: _____

If Sole Owner:

SS No: _____

If a Corporation:

State of Incorporation: _____

Charter No: _____

Submitted By:

(Company Name) (Authorized Signature)

(Street Address) (Printed Name/Title)

(City, State, Zip Code) (Date)

(Telephone Number) (Facsimile Number)

SECTION 6

PRICING AND DELIVERY SCHEDULE

Bid of: _____
(Company Name)

To: The University of Texas Medical Branch at Galveston

Ref.: _____

RFB No.: _____

Gentleman:

Having carefully examined all the specifications and requirements of this RFB and any attachments thereto, the undersigned proposes to furnish the removal, reduction, and disposal of dead trees caused from salt water intrusion due to Hurricane Ike as required per the aforementioned documents at the below quoted terms.

6.1 Type and Quantity of Work

The size and quantity of trees and stumps that will be removed are as follows:

<u>Item</u>	<u>Item Description</u>	<u>Qty.</u>
1	SWK Tree removal (cradle to grave) 6" – 12.99" DBH	227
2	SWK Tree removal (cradle to grave) 13" – 24.99" DBH	186
3	SWK Tree removal (cradle to grave) 25" – 36.99" DBH	40
4	SWK Tree removal (cradle to grave) > 36.99" DBH	5
5	SWK Root Ball removal (cradle to grave)	2
6.	Stump Grinding (except Palm stumps)	458

6.2 Performance Schedule

Bidder shall submit with their response to following two performance schedules

A. Bidder's proposed work schedule, describing once contract has been awarded, when work will start, proposed days the work will be performed and when work will be complete.

B. Schedule of work if work performed only on weekend, to include when work will start once contract has been awarded, proposed days the work will be performed and when work will be complete.

UTMB reserves the right to make an award for the schedule that in the best interest of UTMB.

6.3 Pricing Schedule

Quote lump sump cost to remove quantity of trees, root balls and stumps in 6.1 for each Performance Schedule

A. Bidders Schedule

Tree Removal: \$_____ Total

Root Ball Removal: \$_____ Total

Stump Grinding: \$_____ Total

B. Weekend Schedule

Tree Removal: \$_____ Total

Root Ball Removal: \$_____ Total

Stump Grinding: \$_____ Total

C. Individual Costs:

- . Quote cost for individual services to be used to add or deduct trees from final cost (ref Section 4.2.3)

<u>Item</u>	<u>Item Description</u>	<u>Bidder's Schedule</u>	<u>Weekend Only</u>
1	SWK Tree removal (cradle to grave) 6" – 12.99" DBH		
2	SWK Tree removal (cradle to grave) 13" – 24.99" DBH		
3	SWK Tree removal (cradle to grave) 25" – 36.99" DBH		
4	SWK Tree removal (cradle to grave) > 36.99" DBH		
5	SWK Root Ball removal (cradle to grave)		
6.	Stump Grinding (except Palm stumps)		

6.4 Payment Terms

The following payment term options and discounts are quoted (UTMB's suggested payment terms are 2%/10 NET 30):

Net 30 days _____%

Net 15 days _____%

Net 10 days _____%

Bidder may offer additional payment term options and discounts for UTMB to consider.

6.5 Addenda Checklist

Receipt is hereby acknowledged of the following addenda to this RFB. (initial if applicable)

No. 1 _____ No. 2 _____ No. 3 _____ No. 4 _____

Respectfully submitted,

By: _____
Company Name

Date: _____

SECTION 7

BIDDER'S QUESTIONNAIRE

Bidders are requested to submit a complete response to each of the below listed items. Responses requiring additional space should be brief and submitted as an attachment to your bid package. Please reference each response by its item number indicated below, reference Subsection 2.2, Paragraph C.

Company Profile

1. Number of years in Business: _____
Type of Operation: Individual: _____ Partnership: _____ Corporation: _____ Government: _____
Number of Employees: _____
Annual Sales Volume: _____
2. State that you will provide a copy of your company's financial statements for the past two (2) years, if requested by UTMB.
3. Provide a Financial rating of your company and any documentation (such as a Dunn and Bradstreet analysis) which indicates the financial stability of your company.
4. Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms.
5. Provide any details of all past or pending litigation or claims filed against your company that would affect your company's performance under a Agreement with UTMB.
6. Is your company currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity. If yes, specify date(s), details, circumstances, and prospects for resolution.
7. Provide a customer reference list of no less than three (3) organizations with whom Bidder currently has contracts with and/or has previously provided FEMA reimbursable SWK trees of equal type and scope within the past five (5) years. Reference list to include, company name, contact person, and telephone number, description of products and services provided, and length of business relationship.
8. Does any relationship exist whether by relative, business associate, capital funding agreement or any other such kinship exist between your company and any UTMB employee?, if yes, please explain.
9. What difficulties do you anticipate in serving UTMB and how do you plan to manage these? What assistance will you require from UTMB?
10. Will your company be able to meet the insurance requirements stated in Section 3.18.
11. Provide name, title, address, phone and fax number and e-mail address of individual who can be contacted regarding your companies response to this RFB.