



# CITY OF AUSTIN, TEXAS

## Purchasing Office REQUEST FOR PROPOSAL (RFP) **OFFER SHEET**

Updated 04/22/2020, v1.2

**SOLICITATION NO:**  
RFP 1100 EAL3011REBID

**COMMODITY/SERVICE DESCRIPTION:** Distribution Line  
Clearance, Street and Nightwatchman Lights

**DATE ISSUED:** April 22, 2020  
**REQUISITION NO.:** RQM 1100 20020400300

**PRE-PROPOSAL CONFERENCE TIME AND DATE:** Friday April  
24, 2020, 10:00am CST

**COMMODITY CODE:** 98887, 96239, 96884,  
67590

Online: [https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_NDBiY2I2YmEtNjNINS00ZWY5LWEzMDA%20MD%20EwMzMxZTFIMDJh%40thread.v2/0?context=%7b%22Tid%22%3a%225c5e19f6-a6ab-4b45-b1d0-be4608a9a67f%22%2c%22Oid%22%3a%22c67a4d00-479a-4ee5-b8af-92644dd07405%22%2c%22IsBroadcastMeeting%22%3a%22true%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NDBiY2I2YmEtNjNINS00ZWY5LWEzMDA%20MD%20EwMzMxZTFIMDJh%40thread.v2/0?context=%7b%22Tid%22%3a%225c5e19f6-a6ab-4b45-b1d0-be4608a9a67f%22%2c%22Oid%22%3a%22c67a4d00-479a-4ee5-b8af-92644dd07405%22%2c%22IsBroadcastMeeting%22%3a%22true%7d)

Or Conference Call: 512-831-7858, ID: 662 566 963#

**FOR CONTRACTUAL AND TECHNICAL  
ISSUES CONTACT THE FOLLOWING  
AUTHORIZED CONTACT PERSON:**

Liz Lock  
Procurement Specialist IV  
**Phone: (512) 322-6251**

**E-Mail:** [Liz.Lock@austintexas.gov](mailto:Liz.Lock@austintexas.gov)

Julia Finn  
Procurement Specialist III

**Phone: (512) 322-6060**  
**E-Mail:** [Julia.Finn@ustintexas.gov](mailto:Julia.Finn@ustintexas.gov)

**PROPOSAL DUE PRIOR TO:** May 7, 2020, 2:00pm CST  
**PROPOSAL OPENING TIME AND DATE:** May 7, 2020, 3:00pm  
CST  
**COMPLIANCE PLAN DUE PRIOR TO:** May 7, 2020, 2:00pm CST

**LOCATION:** MUNICIPAL BUILDING, 124 W 8<sup>th</sup> STREET  
RM 308, AUSTIN, TEXAS 78701

**LIVE SOLICITATION OPENING ONLINE:** For RFP's, only the  
names of respondents will be read aloud

For information on how to attend the Solicitation Closing online,  
please select this link:  
<http://www.austintexas.gov/department/bid-opening-webinars>

**When submitting a sealed Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below:**

<b>Address for US Mail (Only)</b>	<b>Address for FedEx, UPS, Hand Delivery or Courier Service</b>
City of Austin	City of Austin, Municipal Building
Purchasing Office-Response Enclosed for Solicitation # RFP 1100 EAL3011REBID	Purchasing Office-Response Enclosed for Solicitation # RFP 1100 EAL3011REBID
P.O. Box 1088	124 W 8 <sup>th</sup> Street, Rm 308
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

**NOTE: Offers must be received and time stamped in the Purchasing Office prior to the Due Date and Time. It is the responsibility of the Offeror to ensure that their Offer arrives at the receptionist's desk in the Purchasing Office prior to the time and date indicated. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Offer arriving on time. See Section 0200 for additional solicitation instructions.**

**All Offers (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.**

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**SUBMIT 1 ORIGINAL AND 1 ELECTRONIC COPY (USB FLASH DRIVE) OF YOUR RESPONSE**

**\*\*\*SIGNATURE FOR SUBMITTAL REQUIRED ON PAGE 4 OF THIS DOCUMENT\*\*\***

**This solicitation is comprised of the following required sections. Please ensure to carefully read each section. By signing this document, you are agreeing to all the items contained herein and will be bound to all terms.**

<b>SECTION NO.</b>	<b>TITLE</b>	<b>PAGES</b>
0100	STANDARD PURCHASE DEFINITIONS	5
0200 V2	STANDARD SOLICITATION INSTRUCTIONS, UPDATED JULY 18, 2019	11
0300	STANDARD PURCHASE TERMS AND CONDITIONS	15
0400	SUPPLEMENTAL PURCHASE PROVISIONS	12
0500	SCOPE OF WORK	11
0600	PROPOSAL PREPARATION INSTRUCTIONS & EVALUATION FACTORS	5
0605	LOCAL BUSINESS PRESENCE IDENTIFICATION FORM – Complete and return	2
0800	NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION–Complete and return	2
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	1
0810 V2	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION, UPDATED JUNE 26, 2018	2
0815	LIVING WAGES CONTRACTOR CERTIFICATION-Complete and return	1
0835	NONRESIDENT BIDDER PROVISIONS – Complete and return	1
0840	SERVICE-DISABLED VETERAN BUSINESS ENTERPRISE – Complete and return	1
0900	MBE/WBE PROCUREMENT PROGRAM PACKET – Must be completed and returned	33
EXHIBIT A	FACTA AFFIDAVIT – Complete and return	1
EXHIBIT B	AUSTIN ENERGY DATA HANDLING CONTROLS, Rev 2.0	11
EXHIBIT C	NETWORK CONNECTION AGREEMENT	11
EXHIBIT D	LABOR DESCRIPTIONS	3
EXHIBIT E	EMPLOYEE/EQUIPMENT/MATERIALS RATE FORM – Complete and return	2
EXHIBIT F	TREE PRUNING AND LINE CLEARANCE SPECIFICATIONS	7
EXHIBIT G	CUSTOMER NOTIFICATION PROCESS	3
EXHIBIT H	CUSTOMER RESOLUTION PROCESS	2
EXHIBIT I	AUSTIN ENERGY INVOICING PROCESS	2

**The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.**

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

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

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

Vendor Registration No. \_\_\_\_\_

Printed Name of Officer or Authorized Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Signature of Officer or Authorized Representative: \_\_\_\_\_

Date: \_\_\_\_\_

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

Phone Number: \_\_\_\_\_

**\* Proposal response must be submitted with this signed Offer sheet to be considered for award**

**CITY OF AUSTIN  
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STANDARD PURCHASE DEFINITIONS**

Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

1. **Addendum** - a written instrument issued by the Contract Awarding Authority that modifies or clarifies the Solicitation prior to the Due Date. "Addenda" is the plural form of the word.
2. **Alternate Offers** - multiple Offers with substantive variations from the same Offeror in response to a Solicitation.
3. **Appropriate, Appropriated, or Appropriation** - the adoption by the City Council of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.
4. **Authorized City Representative** - a person designated by the City Manager to act for the Contract Awarding Authority.
5. **Best Offer** - the best evaluated Offer in response to a Request for Proposals or Request for Qualification Statements.
6. **Best Offeror** - the Offeror submitting the Best Offer.
7. **Bid** - a complete, properly signed response to an Invitation for Bid, which if accepted, would bind the Bidder to perform the resultant Contract.
8. **Bidder** - a person, firm, or entity that submits a Bid in response to an Invitation for Bid. Any Bidder may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
9. **Bid Guaranty** – a form of security assuring that the bidder (a) will not withdraw the Bid within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Bidder upon execution of a Contract.
10. **Bid Sheet** - a document, signed and dated by a Bidder, containing unit and extended bid prices for all goods and/or services, identified by item numbers and descriptions, for which Bids are being submitted
11. **Business Entity** – any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation.
12. **Central Purchase Order (CT)** - a financial system document issued by the Contract Awarding Authority to encumber funds to pay for the deliverables identified in a Contract.
13. **City** - the City of Austin, a Texas home-rule municipal corporation.
14. **Compliance Plan** - is defined in chapter 2-9 of the City Code.
15. **Construction** - the construction, repair, rehabilitation, alteration, conversion or extension of buildings, parks, utilities, streets or other improvements or alterations to real property.
16. **Contract** - a binding legal agreement between the City and the Offeror. The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

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- A. any exceptions to the Offer accepted in writing by the City
  - B. the Supplemental Purchase Terms and Conditions
  - C. the Standard Purchase Terms and Conditions
  - D. the Offer, exhibits, and attachments; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.
17. **Contract Awarding Authority** - a City department authorized to enter into Contracts on behalf of the City.
18. **Contractor/Consultant** - a person, firm or entity that supplies or provides goods and/or services to the City by Contract.
19. **Controlling Interest** means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stocks or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.
20. **Deliverables** - the goods, products, materials, and/or services to be provided to the City under a Purchase Order, Contract, or Master Agreement.
21. **Delivery Order** - a release against a Master Agreement authorizing delivery of goods and/or performance of services. A financial system document issued by the Department to encumber funds to pay for the deliverables.
22. **Disadvantaged Business Enterprise** - is defined in 49 Code of Federal Regulation Part 26 or other applicable federal regulations.
23. **Due Date** - the date and time specified for receipt of Bids, Proposals, Qualification Statements, Quotations, Responses, Submittals and Compliance Plans.
24. **Goods** - supplies, materials, or equipment.
25. **Highest Responsible Offer** - the highest Offer meeting all requirements of the specifications, terms, and conditions of the Invitation for Bid-Sale or Request for Quotation-Sale.
26. **Highest Responsible Offeror** - the Offeror submitting the "Highest Responsible Offer."
27. **Interested Party** – a person who has a Controlling Interest in a Business Entity with whom the City contracts or who actively participates in facilitating the Contract or negotiating the terms of the Contract, including a broker, intermediary, adviser, or attorney for the Business Entity.
28. **Invitation for Bid (IFB)** - a Solicitation requesting pricing for a specified Good or Service which has been advertised for Bid in a newspaper and/or on the Internet.
29. **Late Offer** - a Bid, Proposal, Quote, Response, or Submittal that is received after the Due Date and time specified in the Solicitation.
30. **Lowest Responsible Offer** - the Offer meeting all requirements of the specifications, terms, and conditions of the Invitation for Bid or Request for Quotation resulting in the lowest cost to the City in a total cost concept or based solely on price, taking into consideration the financial and practical ability of the Vendor to perform the Contract, past performance of the Vendor, and compliance with all City ordinances concerning the purchasing process.

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31. **Lowest Responsible Offeror** - the Offeror submitting the Lowest Responsible Offer.
32. **Master Agreement** - a term contract that is used when the total quantity required cannot be definitely fixed, but can be stated as an estimate or within maximum and minimum limits with deliveries on demand. A Master Agreement does not create a financial obligation.
33. **Minority-Owned Business** - is defined in chapter 2-9 of the City Code.
34. **Non-Professional Services** - services performed that are not of a professional nature such as lawn care, security, janitorial, etc.
35. **Offer** - a complete signed response to a Solicitation including, but not limited to, an Invitation for Bid, a Request for Proposal, a Request for Qualification Statements, or a Request for Quotation.
36. **Offeror** - a person, firm, or entity that submits an Offer in response to a City Solicitation. Any Offeror may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status. Includes Bidders, Proposers, Quoters, Contractors and Consultants.
37. **Pre-Bid / Proposal / Quote / Response / Submittal Conference** - a conference conducted by the Contract Awarding Authority, held in order to allow Offerors and Vendors to ask questions about the proposed Contract and particularly the Contract specifications.
38. **Professional Services** - services that use skills that are predominantly mental or intellectual, rather than physical or manual such as accounting, architecture, land surveying, law, medicine, optometry, professional engineering, etc.
39. **Proposal** - a complete, properly signed response to a Request for Proposals, which if accepted, would bind the Proposer to perform the resultant Contract.
40. **Proposal Guaranty** - a form of security assuring that the Proposer (a) will not withdraw the Proposal within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Proposer upon execution of a Contract.
41. **Proposer** - a person, firm or entity that submits a Proposal in response to a Request for Proposals. Any Proposer may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
42. **Purchase Order (PO)** - an order placed by a City department for the purchase of Goods and/or Services written on the City's standard Purchase Order form and which, when accepted by the Vendor becomes a Contract. The Purchase Order is the Vendor's authority to deliver and invoice the City for Goods and/or Services specified, and the City's commitment to accept the Goods and/or Services for an agreed upon price.
43. **Purchasing Office** - refers to the Purchasing Office in the Financial and Administrative Services Department of the City.
44. **Quote** - a complete, properly signed response to a Request for Quotation, which if accepted, would bind the Offeror to perform the resultant Contract.
45. **Quoter** - a person, firm or entity that submits a Quote in response to a Request for Quotations. Any Quoter may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.

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46. **Request for Information (RFI)** - a solicitation used to obtain “state of the art” information on goods and/or services for informational purposes only.
47. **Request for Interest (RFINT)** - a solicitation used to identify interest in a City requirement.
48. **Request for Proposal (RFP)** - a solicitation used to acquire goods and/or services when a clearly defined scope of work or specification is not available.
49. **Request for Qualification Statements (RFQS)** - a solicitation used to acquire professional services as defined by the State of Texas Government Code, Chapter 2254.
50. **Request for Quotation (RFQ)** - a solicitation used to acquire goods and/or services with a total dollar value less than the State of Texas competitive bidding amount.
51. **Resident Bidder** - a person, firm, or entity whose principal place of business is in the State of Texas, including a Contractor whose ultimate parent company or majority owner has its principal place of business in the State of Texas.
52. **Response** - a complete signed reply to a Solicitation including, but not limited to a Request for Information and/or a Request for Interest.
53. **Response Guaranty** – a form of security assuring that the Offeror (a) will not withdraw the Offer within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Offeror upon execution of a Contract.
54. **Responsible** - refers to the financial and practical ability of the Offeror to perform the Contract and takes into consideration resources, expertise, and past performance of the Offeror as well as compliance with all City ordinances concerning the purchasing process.
55. **Responsive** - meeting all the requirements of a Solicitation.
56. **Services** - include all work or labor performed for the City on an independent Contractor basis other than construction.
57. **Solicitation** - as applicable, includes Invitation for Bid, Invitation for Bid - Sale, Request for Proposal, Request for Qualification Statements, Request for Quotation, Request for Quotation – Sale, Request for Information, Request for Interest, or such other request as defined by the City.
58. **Subcontractor/Subconsultant** - a person, firm, or entity providing goods and/or services to a prime Contractor / Consultant to be used in the performance of the prime Contractor/Consultant’s obligations under a Contract.
59. **Sub-Subcontractor/Sub-Subconsultant**- a person, firm or entity providing goods and/or services to a Subcontractor/Subconsultant to be used in the performance of the Subcontractor/Subconsultant’s obligations under a Contract.
60. **Unbalanced Offer** - an Offer that is based on prices which are significantly less than cost for some items and significantly more than cost for others.
61. **Vendor** - a person, firm, or entity that sells Goods and/or Services.
62. **Woman-Owned Business** - is defined in chapter 2-9 of the City Code.

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1. **VENDOR REGISTRATION:** All Vendors, Contractors, Subcontractors, Consultants, and Subconsultants desiring to sell to the City must be registered to do business with the City prior to submitting an Offer to a City solicitation. Prime Contractors/Consultants are responsible for ensuring that their Subcontractors/Subconsultants are registered. Registration can be done through the City's online vendor registration system. [Log onto http://www.austintexas.gov/financeonline/vendor\\_connection/index.cfm](http://www.austintexas.gov/financeonline/vendor_connection/index.cfm) and follow the directions.
2. **EQUAL OPPORTUNITY:**
  - A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
  - B. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.
3. **MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE (MBE/WBE) PROCUREMENT PROGRAM:**

All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C, and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts. Goals for MBE/WBE participation are stated in each Solicitation and differ from contract to contract based on the type of contract, the availability of MBEs/WBEs to perform the functions of the contract, and other factors. Information on achieving the goals or documenting good faith efforts to achieve the goals are contained in the MBE/WBE Program Package contained in Section 0900 of the Solicitation. When goals are established, Offerors are required to complete and return the MBE/WBE Compliance Plan with their Offer. If no goals are established, Offerors are required to submit the No Goals Utilization Plan. If a Compliance Plan or No Goals Utilization Plan is not submitted prior to the date and time set forth in the Solicitation, the Offer will not be accepted for consideration.
4. **SOLICITATION:**
  - A. **Review of Documents:** Offerors are expected to examine all documents that make up the Solicitation. Offerors shall promptly notify the City of any omission, ambiguity, inconsistency or error that they may discover upon examination of the Solicitation. Offerors must use a complete Solicitation to prepare Offers. The City assumes no responsibility for any errors or misrepresentations that result from the use of incomplete Solicitations.
  - B. **Location of Documents:** Solicitations are issued by the Purchasing Office. The location and phone number for the Purchasing Office are specified in the advertisement and in the Solicitation.
5. **WRITTEN EXPLANATIONS OR CLARIFICATIONS:** Any material information given to one Offeror concerning a Solicitation will be furnished as an Addendum to all Offerors who have been issued a Solicitation. Any explanation, clarification, interpretation or change to the Solicitation made in any other manner is not binding upon the City, and Offerors shall not rely upon such explanation, clarification, interpretation or change. Oral explanations or instructions given before the award of the Contract are not binding. Requests for explanations, clarifications or interpretations may be faxed to the City at (512) 974-2388. The fax must clearly identify the buyer's name and solicitation number.

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6. **PRE-BID / PROPOSAL / RESPONSE CONFERENCE:** If a Pre-Bid/Proposal/Response conference is mandatory, the time, place and mandatory nature of the conference will be specified on the cover page of the Solicitation. If a Pre-Bid/Proposal/Response Conference is mandatory and is not attended by an Offeror, their Offer will be rejected.
7. **PREPARATION OF OFFERS:**
- A. **Alternate Offers:** Alternate Offers will be rejected unless the Solicitation authorizes the submission of Alternates.
  - B. **Bid Preparation Costs:** All costs associated with preparing a Bid in response to a Solicitation shall be borne by the Bidder.
  - C. **Bid / Proposal / Response Guaranty or Bond:** When required by the Solicitation, an Offer must be accompanied by a Bid/Proposal/Response Guaranty or a Bid / Proposal / Response Bond with Power of Attorney attached, issued by a solvent surety authorized under laws of the State of Texas and acceptable to the City.
  - D. **Brand Name or Equal:** If the Solicitation indicates brand name or "equal" products are acceptable, the Offeror may propose an "equal" product but must be prepared to demonstrate those features that render it equal. Final determination of a product as an "equal" remains with the City.
  - E. **Delivery Time:** Delivery time, if stated as a number of days, will be based on calendar days. Time is of the essence in any City purchase. If the indicated date cannot be met or the date is not indicated, the Offeror shall state its best delivery time.
  - F. **Exceptions:** Exceptions that are taken to any portion of the Solicitation may jeopardize acceptance of the Offer.
  - G. **Free on Board (FOB) Point:** The Offeror should quote its lowest and best price, with the goods delivered to the place specified, at the Offeror's expense and risk, and there tender delivery to the City.
  - H. **Payment:** Payment terms shall be net 30 days.
  - I. **Prices:** Offers shall be firm unless otherwise specified. Pricing shall be entered on the Bid/Quote Sheet (if applicable) in ink. Totals shall be entered in the "Total Price" column of the Bid/Quote Sheet. In the event of a discrepancy between unit price and extended price, the unit price shall govern.
  - J. **Proposal Preparation Costs:** All costs directly or indirectly related to preparation of a Response to an RFP or any oral presentation required to supplement and/or clarify a Proposal which may be required by the City shall be the sole responsibility of the Proposer.
  - K. **Proprietary Information:**
    - i. All material submitted to the City becomes public property and is subject to the Texas Public Information Act, Chapter 552, Texas Government Code, upon receipt.
    - ii. If an Offeror does not desire proprietary information in the Offer to be disclosed, each page must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General.
    - iii. Failure to identify proprietary information will result in all unmarked sections being deemed nonproprietary and available upon public request.
    - iv. For Bids submitted in response to an Invitation for Bids (IFB), the City will not consider any requests to keep the contents of a Bid Sheet Proprietary or Confidential.

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- L. **Signature:** The Offeror must sign each document in the Solicitation requiring a signature. Any change made to the Offer must be initialed by the Offeror.
- M. **Taxes:** Purchases of Goods or Services for City use are usually exempt from City, State, and most Federal Taxes. Offers should not include exempted taxes. The successful Offeror should request a Tax Exemption Certificate from the Purchasing Office. Under no circumstances shall the City be liable to pay exempt taxes under any Contract.
- N. **Anti-Lobbying and Procurement:** Article 6, Chapter 2-7, City Code, repealed and replaced effective on June 25, 2018, prohibits lobbying activities or representations by Offerors during the No-Lobbying Period.

**1. FINDINGS; PURPOSE.**

- (A) The council finds that persons who enter a competitive process for a city contract voluntarily agree to abide by the terms of the competitive process, including the provisions of this article.
- (B) The council finds that it is in the City's interest:
- (i) to provide the most fair, equitable, and competitive process possible for selection among potential vendors in order to acquire the best and most competitive goods and services; and
  - (ii) to further compliance with State law procurement requirements.
- (C) The council intends that:
- (i) each response is considered on the same basis as all others; and
  - (ii) respondents have equal access to information regarding a solicitation, and the same opportunity to present information regarding the solicitation for consideration by the City.

**2. APPLICABILITY.**

- (A) This article applies to all solicitations except:
- (i) City social service funding;
  - (ii) City cultural arts funding;
  - (iii) federal, state or City block grant funding;
  - (iv) the sale or rental of real property;
  - (v) interlocal contracts or agreements; and
  - (vi) solicitations specifically exempted from this article by council.
- (B) Absent an affirmative determination by the council, the purchasing officer has the discretion to apply this article to any other competitive process.
- (C) City Code Section 1-1-99 (*Offenses; General Penalty*) does not apply to this article.

**3. DEFINITIONS.**

In this article:

- (A) AGENT means a person authorized by a respondent to act for or in place of the respondent in order to communicate on behalf of that respondent. Each of the following is presumed to be an agent:
- (i) a current full-time or part-time employee, owner, director, officer, member, or manager of a respondent;
  - (ii) a person related within the first degree of consanguinity or affinity to a current full-time or part-time employee, owner, director, officer, member, or manager of a respondent;
  - (iii) a person related within the first degree of consanguinity or affinity to the respondent, if a respondent is an individual person; and
  - (iv) a lobbyist, attorney, or other legal representative of the respondent that has been retained by the respondent with respect to the subject matter of either the solicitation or the respondent's response to the solicitation.

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- (B) AUTHORIZED CONTACT PERSON means a City employee designated in a City solicitation as the point of contact for all purposes for that solicitation.
- (C) CITY EMPLOYEE is defined in Section 2-7-2 (*Definitions*), and further includes an independent contractor hired by the City with respect to the solicitation.
- (D) CITY OFFICIAL is defined in Section 2-7-2 (*Definitions*).
- (E) NO-LOBBYING PERIOD means the period of time beginning at the date and time a solicitation is published and continuing through the earliest of the following:
  - (i) the date the last contract resulting from the solicitation is signed;
  - (ii) 60 days following council authorization of the last contract resulting from the solicitation; or
  - (iii) cancellation of the solicitation by the City
- (F) PURCHASING OFFICER means the City employee authorized to carry out the purchasing and procurement functions and authority of the City.
- (G) RESPONSE means a written offer or submission in reply to a solicitation.
- (H) RESPONDENT means a person or entity that has timely submitted or subsequently timely submits a response to a City solicitation, even if that person subsequently withdraws its response or has been disqualified by the City for any reason. Respondent includes:
  - (i) a subsidiary or parent of a respondent;
  - (ii) a joint enterprise, joint venture, or partnership with an interest in a response and in which a respondent is a member or is otherwise involved, including any partner in such joint enterprise, joint venture, or partnership; and
  - (iii) a subcontractor to a respondent in connection with that respondent's response.
- (I) SOLICITATION means an opportunity to compete to conduct business with the City that requires council approval under City Charter Article VII Section 15 (*Purchase Procedure*), and includes, without limitation:
  - (i) an invitation for bids;
  - (ii) a request for proposals;
  - (iii) a request for qualifications;
  - (iv) a notice of funding availability; and
  - (v) any other competitive solicitation process for which the purchasing officer, in the purchasing officer's sole discretion, affirmatively determines this article should apply in accordance with Section 2-B.

**4. RESTRICTION ON LOBBYING.**

Subject to the exclusions in Section 5 (*Permitted Communications*), during a no-lobbying period,

- (A) a respondent or an agent shall not communicate directly with a City official or a City employee, or both in order to:
  - (i) provide substantive information about any respondent or response with respect to the solicitation to which the communication relates;
  - (ii) encourage the City to reject one or more of the responses to the solicitation to which the communication relates;
  - (iii) convey a complaint about the solicitation to which the communication relates; or
  - (iv) ask any City official or City employee to favor or oppose, recommend or not recommend, vote for or against, consider or not consider, or take action or refrain from taking action on any vote, decision, or agenda item regarding the solicitation to which the communication relates.
- (B) a City official shall not contact or communicate with a respondent regarding a response or the solicitation to which the no-lobbying period applies;
- (C) a City employee, other than the authorized contact person, shall not contact or communicate with a respondent regarding a response or the solicitation to which the no-lobbying period applies.

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**5. PERMITTED COMMUNICATIONS.**

The following communications are permitted under this article at any time:

- (A) any communication between a respondent or agent and any authorized contact person, including, without limitation and in accordance with regulation, any complaint concerning the solicitation;
- (B) any communication between a respondent or agent and any person to the extent the communication relates solely to an existing contract between a respondent and the City, even when the scope, products, or services of the current contract are the same or similar to those contained in an active solicitation;
- (C) any communication between a respondent or an agent and a City employee to the extent the communication relates solely to a non-substantive, procedural matter related to a response or solicitation;
- (D) any communication required by or made during the course of a formal protest hearing related to a solicitation;
- (E) any communication between a respondent or an agent and the City's Small & Minority Business Resources Department, that solely relates to compliance with Chapters 2-9A through 2-9D (*Minority-Owned and Women-Owned Business Enterprise Procurement Program*) of the City Code;
- (F) any communication between an attorney representing a respondent and an attorney authorized to represent the City, to the extent the communication is permitted by the Texas Disciplinary Rules of Professional Conduct;
- (G) any communication made by a respondent or an agent to the applicable governing body during the course of a meeting properly noticed and held under Texas Government Code Chapter 551 (*Open Meetings Act*);
- (H) any communication between a respondent or an agent and a City employee whose official responsibility encompasses the setting of minimum insurance requirements for the solicitation to which the communication relates, to the extent the communication relates solely to the insurance requirements established by the City in the solicitation; and
- (I) any contribution or expenditure as defined in Chapter 2-2 (*Campaign Finance*).

**6. MODIFICATION OF RESTRICTION.**

The purchasing officer may waive, modify, or reduce the requirements in Section 4 (*Restrictions on Lobbying*) in order to allow respondents to communicate with a City employee or a City official other than the authorized contact person when the purchasing officer determines, in writing, that the solicitation must be conducted in an expedited manner, including but not limited to a solicitation conducted for reasons of health or safety under the shortest schedule possible with no extensions. Any such modification authorized by the purchasing officer shall be stated in the solicitation.

**7. NOTICE.**

- (A) Each solicitation shall include a notice advising respondents and prospective respondents:
  - (i) of the requirements of this article;
  - (ii) that any communication initiated by a City employee or City official, other than the authorized contact person, during the no-lobbying period regarding a response or the solicitation may result in a violation of Section 4(A) if the respondent subsequently lobbies that City employee or City official.
- (B) The purchasing officer, or a City employee designated by the purchasing officer, shall provide weekly written notice, accessible to all City employees and City officials, of each solicitation for which the no-lobbying period is in effect.

**8. DISCLOSURE OF VIOLATION.**

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A City official or a City employee other than the authorized contact person that becomes aware of a violation of Section 4 (*Restrictions on Lobbying*) shall notify the authorized contact person in writing as soon as practicable.

**9. ENFORCEMENT.**

- (A) A respondent that has been disqualified pursuant to Section 10(A) (*Disqualification; Contract Voidable*) may appeal such disqualification to a subcommittee that is less than a quorum of the Ethics Review Commission established in Chapter 2-7, Article 2 (*Ethics Review Commission*), whose decision on appeal shall be final and binding. Any appeal must be filed in the manner prescribed by the Ethics Review Commission within 5 calendar days of the notice given by the purchasing officer pursuant to Section 10(B).
- (B) The purchasing officer shall waive a violation of Section 4(A) if the violation was solely the result of communications initiated by a City official or a City employee other than the authorized contact person.
- (C) The purchasing officer has the authority to enforce this article through rules promulgated in accordance with Chapter 1-2 (*Adoption of Rules*), which at a minimum shall include a notice and protest process for respondents disqualified pursuant to Section 10 (*Disqualification; Contract Voidable*), including:
  - (1) written notice of the disqualification imposed pursuant to Section 10 (*Disqualification; Contract Voidable*);
  - (2) written notice of the right to protest the disqualification imposed; and
  - (3) written notice of the right to request an impartial hearing process.

**10. DISQUALIFICATION; CONTRACT VOIDABLE.**

- (A) If the purchasing officer finds that a respondent has violated Section 2-7-104(1), the respondent is disqualified from participating in the solicitation to which the violation related.
- (B) The purchasing officer shall promptly provide written notice of disqualification to a disqualified respondent.
- (C) If a respondent is disqualified from participating in a solicitation as a result of violating Section 2-7-104(1) and the solicitation is cancelled for any reason, that respondent is also disqualified from submitting a response to any reissue of the same or similar solicitation for the same or similar project. For the purposes of this section, the purchasing officer may determine whether any particular solicitation constitutes a “same or similar solicitation for the same or similar project”.
- (D) If a respondent violates Section 104(1) and is awarded a contract resulting from the solicitation to which the violation relates, the City may void that contract.
- (E) Respondents that violate Section 2-7-104(1) three or more times during a five year period may be subject to debarment from participating in any new contracts with the City for a period of up to three years.

8. **SUBMISSION OF OFFERS:** Offerors are required to submit an executed original and copies of the Offer as specified on the Offer Sheet of the Solicitation.

- A. **Documents required with Offer:** Submit the following documents with the Offer, as applicable, prior to the Due Date (**SEE SECTIONS 0400, 0500 and 0600 IN THE SOLICITATION FOR ADDITIONAL REQUIRED INFORMATION**). **Failure to submit the documents may be grounds to reject the Offer:**
  - i. Cover Page, Offer Sheet signed by an authorized representative; ii. Section 0600, Bid/Quote Sheet or Offer, as applicable; iii. Section 0605, Local Business Presence Identification, if applicable;
  - iv. Section 0700, Reference Sheet, as applicable ;
  - v. Sections 0835 – Non-Resident Bidder Provisions;

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- vi. 0815, Living Wage and Benefits Contractor Certification, if applicable;
- vii. Section 0900, MBE/WBE Procurement Program Package;
- viii. Bid/Proposal Guaranty, if applicable; and ix.. any other document included in the Solicitation requiring completion or execution by the Offeror.

All other pages in the Solicitation should be retained by the Offeror.

- B. **Mailing:** Offers and Compliance Plans (when required by the Solicitation), must be returned in a sealed envelope or container marked on the outside with the:

**Offeror's Name & Address  
Solicitation Number  
Due Date and Time**

- i. If a MBE/WBE Compliance Plan is required, it may be submitted with the sealed Offer or in a separate sealed envelope. If the Compliance Plan is included with the Offer, the outside of the envelope must indicate that the Compliance Plan is included. If the Compliance Plan is submitted in a separate envelope, the outside of the envelope must identify the contents as the "Compliance Plan" and must also include the Offeror's name & address, the Solicitation number, and the Due Date and Time. If a Compliance Plan is required but is not submitted prior to the time set forth in the Solicitation, the Offer will not be accepted for consideration.
- ii. When sending an Offer and/or Compliance Plan, use the proper address as shown below:

<b>Address for US Mail (Only)</b>	<b>Address for Fedex, UPS, Hand Delivery or Courier Service</b>
City of Austin	City of Austin, Municipal Building
Purchasing Office-Response Enclosed for Solicitation #	Purchasing Office-Response Enclosed for Solicitation #
P.O. Box 1088	124 W 8 <sup>th</sup> Street, Rm 310
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

Note: Offers (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.

- iii. Unless authorized in the Solicitation, email, facsimile, or electronic Offers will not be accepted.
- C. **Addendum:** Receipt of an Addendum should be acknowledged by signing and returning the Addendum with the Offer or under separate cover prior to the Due Date. The Addendum should be returned with the Offeror's name, address, the Solicitation number, and the Due Date and Time. If the elements covered in the addendum directly impact cost and the addendum is not returned before the Due Date and Time, the offer will be disqualified.
- D. **Acceptance of Offers:** Offers must be received and time stamped at the receptionist's desk in the Purchasing Office prior to the Due Date and Time. The time stamp clock on the receptionist's desk in the Purchasing Office is the official time of record and is verified daily with the local time service at (512) 476-7744. It is the sole responsibility of the Offeror to ensure timely delivery of the Offer. The City will not be responsible for failure of service on the part of the U.S. Postal Office, courier companies, or any other form of delivery service chosen by the Offeror.

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- E. **Late Offers:** All Offers received after the Due Date and Time are considered late and will be returned to the Offeror. It is the responsibility of the Offeror to ensure that their Offer arrives at the proper location by the time and date indicated. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Offer arriving on time. Late Offers will be rejected unless the Purchasing Office, at its sole discretion, determines that the City's misdirection or mishandling was the sole or main cause for the Offer's late receipt at the designated location.
- F. **Rejection of Offers:** The City reserves the right to reject any or all Offers and to waive any minor informality in any Offer or solicitation procedure (a minor informality is one that does not affect the competitiveness of the Offer).
9. **MODIFICATION OR WITHDRAWAL OF OFFERS:**
- A. **Modification of Offers:** Offers may be modified in writing at any time prior to the Due Date.
- B. **Withdrawal of Offers:** Offers may be withdrawn in writing, by email, or by facsimile (provided that the facsimile is signed by the Offeror) at any time prior to the Due Date. An Offeror may also withdraw an Offer in person, provided the withdrawal is made prior to the Due Date. A receipt of withdrawal must be signed by the Offeror. Withdrawn Offers may be resubmitted, with or without modifications, up to the Due Date.
10. **OPENING OF BIDS:** The Purchasing Office representative responsible for opening Bids shall confirm the time and announce the Bid opening. The representative shall then personally and publicly open all Bids timely received, reading each Bid aloud. Following the Bid opening, the City will post on the City's website the Bid Sheets from all timely received Bids.
11. **OPENING OF PROPOSALS / QUALIFICATIONS STATEMENTS AND RELEASE OF INFORMATION:** Proposals / Qualifications Statements will be opened in a manner that avoids disclosure of the contents. Following the Opening of Proposals / Qualification Statements, the City will post on the City's website the names of all Offerors submitting Proposals / Qualification Statements. At its sole discretion, the City may release to the public information that is contained in an opened Proposals / Qualifications Statement after City staff review, except as prescribed by State law, including Texas Government Code Chapter 552 and Local Government Code Chapter 252, provided that the City determines that the disclosure will not create a competitive disadvantage for the City.
12. **EVALUATION FACTORS AND AWARD FOR QUOTES AND BIDS:**
- A. **Evaluation:** Offerors may furnish pricing for all or any portion of the Solicitation (unless otherwise specified). However, the City may evaluate and award the Contract for any item or group of items shown on the Solicitation, or any combination deemed most advantageous to the City. Offers that specify an "all or none" award may be considered if a single award is advantageous. An Offer containing prices significantly lower than all other Offeror's prices for an item will present a rebuttable presumption of irresponsibility.
- B. **Award:** Request for Quotations and Invitations for Bids will be awarded to the Lowest Responsible Offeror. Invitation for Bids – Best Value will be awarded to the offeror who provides goods or services at the best value for the City based on factors outlined in Section 0600. Request for Quotations – Sale and Invitation for Bids – Sale will be awarded to the Highest Responsible Offeror.
- C. **Local Business Presence:** A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years, currently employs residents of the City of Austin, Texas, and will use employees that reside in the City of Austin, Texas, to support this Contract. The City defines headquarters as the administrative center where most of the important

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functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

- (1) For Invitations for Bids if the City receives a competitive sealed bid from an offeror who has Local Business Presences and whose bid is within three percent of the lowest bid price received from an offeror who does not have Local Business Presence, the City may enter into a contract with the local vendor.
- (2) For Request for Proposals and Invitation For Bids-Best Value: Points will be awarded through a combination of the Offeror's Local Business Presence and/or the Local Business Presence of their subcontractors per the below evaluation criteria. Evaluation of the Team's Percentage of Local Business Presence will be based on the dollar amount of goods and/or services as reflected in the Offeror's MBE/WBE Compliance Plan or MBE/WBE Utilization Plan. For Local Business Presence to be considered a completed Section 0605 must be returned with the Offer.

**LOCAL BUSINESS PRESENCE (Maximum 10 points)**

Team's Local Business Presence	Points Awarded
Local business presence of 90% to 100%	10
Local business presence of 75% to 89%	8
Local business presence of 50% to 74%	6
Local business presence of 25% to 49%	4
Local presence of between 1 and 24%	2
No local presence	0

- D. **Acceptance of Quote/Bid:** Acceptance of a Quote/Bid for an open market purchase or supply or service Master Agreement will be by a Purchase Order or a Contract as appropriate. Subsequent Delivery Orders may be issued as appropriate. The contents of a Quote/Bid shall become a part of the Purchase Order/Contract. Under no circumstances will the City be responsible for Goods or Services provided without an acceptance signed by or authorized by an Authorized City Representative.

**13. EVALUATION FACTORS AND AWARD FOR PROPOSALS AND RESPONSES:**

**Competitive Selection:** This procurement will comply with applicable City of Austin Policy. The successful Proposer will be selected by the City on a rational basis. Evaluation factors outlined in Section 0600 of the Solicitation shall be applied to all eligible, responsive Proposers in comparing proposals and selecting the successful Proposer. Award of a contract may be made without discussion with Proposers after proposals are received. Proposals should, therefore, be submitted on the most favorable terms.

**14. RESERVATIONS:** The City expressly reserves the right to:

- A. specify approximate quantities in the Solicitation;
- B. extend the Solicitation closing date and time;
- C. waive as an informality, minor deviations from specifications provided they do not affect competition or result in functionally unacceptable Goods or Services;
- D. waive any minor informality in any Offer or Solicitation procedure (a minor informality is one that does not affect the competitiveness of the Offeror);
- E. add additional terms or modify existing terms in the Solicitation;
- F. reject an Offer containing exceptions, additions, qualifications or conditions not called for in the solicitation;
- G. reject an Offer received from an Offeror who is currently debarred or suspended by the City or State;

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- H. reject an Offer received from an Offeror who is currently debarred or suspended by the Federal Government (Applicable if project receives Federal funding);
  - I. reject an Offer that contains fraudulent information;
  - J. reject an Offer that has material omissions;
  - K. reject or cancel any or all Offers;
  - L. reissue a Solicitation;
  - M. procure any item by other means;
  - N. consider and accept alternate Offers, if specified in the Solicitation, when most advantageous to the City; and/or
  - O. reject an Offer because of unbalanced unit prices;
15. **NEGOTIATIONS OF PROPOSALS:** The City reserves the right to negotiate all elements which comprise the Offeror's Proposal to ensure that the best possible consideration be afforded to all concerned.
16. **CONTRACT INCORPORATION:** Offeror should be aware that the contents of the successful Offer will become a part of the subsequent contractual documents. Failure of the successful Offeror to accept this obligation may result in the cancellation of any award. Any damages accruing to the City as a result of the successful Offeror's failure to contract may be recovered from the successful Offeror.
17. **OPPORTUNITY TO PROTEST:** The Purchasing Officer has the authority to settle or resolve any claim of an alleged deficiency or protest. The procedures for notifying the City of Austin of an alleged deficiency or filing a protest are listed below. If you fail to comply with any of these requirements, the Purchasing Officer may dismiss your complaint or protest.
- A. **Prior to Offer Due Date:** If you are a prospective Offeror and you become aware of the facts regarding what you believe is a deficiency in the solicitation process before the Due Date for receipt of Offers, you must notify the City in writing of the alleged deficiency before that date, giving the City an opportunity to resolve the situation prior to the Offer Due Date.
  - B. **After Offer Due Date:** If you submit an Offer to the City and you believe that there has been a deficiency in the solicitation process or the award, you have the opportunity to protest the solicitation process or the recommended award as follows:
    - i. You must file written notice of your intent to protest within four (4) calendar days of the date that you know or should have known of the facts relating to the protest. If you do not file a written notice of intent within this time, you have waived all rights to protest the solicitation process or the award.
    - ii. You must file your written protest within fourteen (14) calendar days of the date that you know or should have known of the facts relating to the protest unless you know of the facts before the Offer has been closed. If you know of the facts before those dates, you must notify the City as stated above.
    - iii. You must submit your protest in writing and must include the following information:
      - (1) your name, address, telephone, and fax number;
      - (2) the solicitation number and the CIP number, if applicable;
      - (3) a detailed statement of the factual grounds for the protest, including copies of any relevant documents.
    - iv. Your protest must be concise and presented logically and factually to help with the City's review.
    - v. When the City receives a timely written protest, the Purchasing Officer will determine whether the grounds for your protest are sufficient. If the Purchasing Officer decides that the grounds are sufficient, the Purchasing Office will schedule a protest hearing, usually within five (5) working days. If the Purchasing Officer determines that your grounds are insufficient, the City will notify you of that decision in writing.
    - vi. The protest hearing is informal and is not subject to the Open Meetings Act. The purpose of the hearing is to give you a chance to present your case, it is not an adversarial proceeding. Those who may attend from the City are: representatives from the department that requested the

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purchase, the Department of Law, the Purchasing Office, and other appropriate City staff. You may bring a representative or anyone else that will present information to support the factual grounds for your protest with you to the hearing.

- vii. A decision will usually be made within fifteen (15) calendar days after the hearing.
- viii. The City will send you a copy of the hearing decision after the appropriate City staff has reviewed the decision.
- ix. When a protest is filed, the City usually will not make an award until a decision on the protest is made. However, the City will not delay an award if the City Manager or the Purchasing Officer determines that:
  - (1) the City urgently requires the supplies or services to be purchased, or
  - (2) failure to make an award promptly will unduly delay delivery or performance.In those instances, the City will notify you and make every effort to resolve your protest before the award.

**18. INTERESTED PARTIES DISCLOSURE**

As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the successful Offeror. The Offeror is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

<https://www.ethics.state.tx.us/File/>

**19. POST OFFER DOCUMENTS REQUIRED FROM SUCCESSFUL OFFEROR:**

- A. **Letters of Intent:** When a MBE/WBE Compliance Plan is required, the successful Offeror must submit to the Purchasing Officer the Letters of Intent to subcontract required by the Compliance Plan within three (3) business days after notification. Failure to submit the required letters will be grounds for rejection of the Offer.
- B. **Certificates of Insurance:** When insurance is required, the Offeror must provide proof of coverage prior to execution of a Contract. The Offeror shall provide Certificates of Insurance in the amounts and for the coverages required to the Purchasing Office within 14 calendar days after written request from the City (See also "Insurance" in Section 0400, Supplement Purchase Provisions, of the Solicitation).
- C. **Bonds:** When Bonds are required, the Offeror must provide the bonds prior to the execution of the Contract. The Offeror shall provide the Bonds, in the amounts and on the conditions required, within 14 calendar days after notification of award, or as otherwise required by the Solicitation.
- D. **Chapter 176 Conflict of Interest Disclosure:** In accordance with Chapter 176 of the Texas Local Government Code, Offeror must file a Conflict of Interest Questionnaire with the Office of the City Clerk no later than 5:00 P.M. on the seventh (7<sup>th</sup>) business day after the commencement of contract discussions or negotiations with the City or the submission of an Offer, or other writing related to a potential Contract with the City. The questionnaire is available on line at the following website for the City Clerk:

<http://www.austintexas.gov/department/conflict-interest-questionnaire>

There are statutory penalties for failure to comply with Chapter 176.

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By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all Deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE DELIVERABLES**: The Contractor will package Deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the Deliverables under reservation and no tender of a bill of lading will operate as a tender of Deliverables.
5. **TITLE & RISK OF LOSS**: Title to and risk of loss of the Deliverables shall pass to the City only when the City actually receives and accepts the Deliverables.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the Deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the Deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of Deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **PLACE AND CONDITION OF WORK**: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City

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harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

10. **WORKFORCE**

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
  - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
  - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

11. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

12. **INVOICES:**

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and Deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

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13. **PAYMENT:**

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the Deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
  - i. delivery of defective or non-conforming Deliverables by the Contractor;
  - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
  - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
  - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
  - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
  - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

14. **TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

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No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

15. **FINAL PAYMENT AND CLOSE-OUT:**

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
  - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
  - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

16. **SPECIAL TOOLS & TEST EQUIPMENT:** If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. **AUDITS and RECORDS:**

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. Records Retention:
  - i. Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.
  - ii. All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City
  - iii. The Contractor shall retain all Records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.
- C. The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.

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18. **Financial Disclosures and Assurances:** The City may request and review financial information as the City requires to determine the credit worthiness of the Contractor, including but not limited to, annual reports, audited financial statements and reports, bank letters of credit or other credit instruments. Failure of the Contractor to comply with this requirement shall be grounds for terminating the Contract.
19. **SUBCONTRACTORS:**
- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
  - B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
    - i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
    - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
    - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
    - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
    - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
  - C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
  - D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.
20. **WARRANTY-PRICE:**
- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.
  - B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

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- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.
20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.
21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
- A. Recycled Deliverables shall be clearly identified as such.
- B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
- C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
- D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
- E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
- B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of

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discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

- C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.
23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES**: If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
24. **RIGHT TO ASSURANCE**: Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
25. **STOP WORK NOTICE**: The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT**: The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE**: In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE**: The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally

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available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

30. **DELAYS:**

A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. **INDEMNITY:**

A. Definitions:

i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

(1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or

(2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

32. **INSURANCE:** (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised March 2013).

A. General Requirements.

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- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

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- B. Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions
33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
34. **NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
35. **TEXAS PUBLIC INFORMATION ACT:**
- A. All material submitted by the Contractor to the City related to the Contract shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
- B. In accordance with Texas Government Code Sec. 552.372, if this Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a fiscal year, Contractor agrees to:
- i. Preserve all contracting information related to the Contract as provided by the records retention requirements in Section 17 (Audits and Records) of the Contract;
  - ii. Promptly provide to the City any contracting information related to the Contract that is in the custody or possession of Contractor on request of the City; and
  - iii. On completion of the Contract, either:
    - (1) Provide at no cost to the City all contracting information related to the Contract that is in the custody or possession of Contractor; or
    - (2) Preserve the contracting information related to the Contract as provided by the records retention requirements in Section 17 (Audits and Records) of the Contract.
- C. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract, and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that Subchapter.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any

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patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.

37. **CONFIDENTIALITY:** In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **PUBLICATIONS:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.
39. **ADVERTISING:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
40. **NO CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
41. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
42. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty

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thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

43. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
44. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
45. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
46. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
47. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
48. **DISPUTE RESOLUTION**:
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees

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equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

49. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
50. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.
51. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

52. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.
53. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

54. **EQUAL OPPORTUNITY**

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- A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
- B. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

55. **BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)**

- A. Definitions. As used in this paragraph –
- i. "Component" means an article, material, or supply incorporated directly into an end product.
  - ii. "Cost of components" means -
    - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
    - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
  - iii. "Domestic end product" means-
    - (1) An unmanufactured end product mined or produced in the United States; or
    - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
  - iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
  - v. "Foreign end product" means an end product other than a domestic end product.
  - vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another

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Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.

- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

56. **PROHIBITION OF BOYCOTT ISRAEL VERIFICATION**

Pursuant to Texas Government Code §2270.002, the City is prohibited from contracting with any "company" for goods or services unless the following verification is included in this **Contract**.

- A. For the purposes of this Section only, the terms "company" and "boycott Israel" have the meaning assigned by Texas Government Code §2270.001.
- B. If the **Principal Artist** qualifies as a "company", then the **Principal Artist** verifies that he:
- i. does not "boycott Israel"; and
  - ii. will not "boycott Israel" during the term of this **Contract**.
- C. The **Principal Artist's** obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2270 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.

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The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS:** (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Authorized Contact Person no later than five (5) days prior to the solicitation due date.

2. **INSURANCE:** Insurance is required for this solicitation.

A. **General Requirements:** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
- ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

City of Austin Purchasing Office  
P. O. Box 1088  
Austin, Texas 78767

OR

[PURInsuranceCompliance@austintexas.gov](mailto:PURInsuranceCompliance@austintexas.gov)

B. **Specific Coverage Requirements:** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee.
  - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
    - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
    - (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage
- ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$5,000,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
  - (1) The policy shall contain the following provisions:
    - (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
    - (b) Contractor/Subcontracted Work.

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- (c) Products/Completed Operations Liability for the duration of the warranty period.
        - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.
        - (e) Damage and injury by wildfire caused by insureds work under this contract
      - (2) The policy shall also include these endorsements in favor of the City of Austin:
        - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
        - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
        - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
    - iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage.
      - (1) The policy shall include these endorsements in favor of the City of Austin:
        - (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
        - (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
        - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
    - iv. **Property Insurance:** The Contractor shall provide All Risk Property coverage in the amount of \$25,000 including, but not limited to, fire, wind, hail, theft, vandalism, and malicious mischief for all real and personal property owned by the City and in the care, custody, and control of the Contractor. The City shall be added to the property policy as a Loss Payee as their interest may appear. Property Insurance will only be required at the time the Contractor is issued a City of Austin owned tablet.
  - C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.
3. **PROPOSAL / RESPONSE BOND: ("BOND")**
- A. All Offers shall be accompanied by a Proposal / Response Bond in an amount of five percent (5%) of the Performance Bond amount. The Proposal / Response Bond must have a Power of Attorney attached, issued by a solvent surety authorized under the laws of the State of Texas and acceptable to the City.
  - B. The Proposal / Response Bond accompanying the Offer of the apparent successful Offeror will be retained until a Contract is awarded and the successful Offeror executes the Contract and furnishes any required bonds and insurance, after which the Proposal / Response Bond will be returned to the Offeror. The Proposal / Response Bond provided by the next lowest or next Best Offeror will be retained until a Contract is awarded. All other Proposal / Response Bonds will be returned within a reasonable amount of time necessary to make an award recommendation.
4. **PAYMENT BOND: (May also include a Bid / Proposal / Response Bond / Guaranty – see paragraph 5 above)**
- A. The Contractor shall provide a Payment Bond in an amount equal to \$500,000 within 14 calendar days after Austin City Council approval. The Payment Bond serves as security for the faithful payment of all of the Contractor's obligations for subcontracts, work, labor, equipment, supplies, and materials furnished under the Contract. The Payment Bond shall be issued by a solvent company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by the City pursuant to applicable law. The Surety must obtain reinsurance for any portion of the risk that exceeds 10% of the Surety's capital and surplus. For bonds exceeding \$100,000, the

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Surety must also hold a certificate of authority from the U.S. Secretary of the Treasury or have obtained reinsurance from a reinsurer that is authorized as a reinsurer in Texas and holds a certificate of authority from the U.S. Secretary of the Treasury.

- B. The Payment Bond shall remain in effect throughout the term of the Contract, and shall be renewed for each respective extension.

5. **PERFORMANCE BOND:**

- A. The Contractor shall provide a Performance Bond in an amount equal to \$500,000 within 14 calendar days after Austin City Council Approval. The Performance Bond serves as security for the faithful performance of all of the Contractor's obligations under the Contract. The Performance Bond shall be issued by a solvent company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by the City pursuant to applicable law. The Surety must obtain reinsurance for any portion of the risk that exceeds 10% of the Surety's capital and surplus. For bonds exceeding \$100,000, the Surety must also hold a certificate of authority from the U.S. Secretary of the Treasury or have obtained reinsurance from a reinsurer that is authorized as a reinsurer in Texas and holds a certificate of authority from the U.S. Secretary of the Treasury.
- B. The Performance Bond shall remain in effect throughout the term of the Contract and shall be renewed for each respective extension.

6. **TERM OF CONTRACT:**

- A. The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 24 months. The Contract may be extended beyond the initial term for up to 3 additional 12 month periods at the City's sole option. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
- B. Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract. Any hold over period will not exceed 120 calendar days unless mutually agreed on by both parties in writing.
- C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above.
- D. Prices are firm and fixed for the first 12 months. Thereafter, price changes are subject to the Economic Price Adjustment provisions of this Contract.

7. **QUANTITIES:** The quantities listed herein are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.

8. **INVOICES and PAYMENT:** (reference paragraphs 12 and 13 in Section 0300)

- A. Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed to the below address:

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	City of Austin
Department	Austn Energy
Attn:	Anna Hernandez
Email	anna.hernandez@austinenergy.com

- B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.
- C. The Contractor shall follow the Austin Energy Invoicing Process as defined in Exhibit I and as described below.

**9. INVOICING PROCEDURES**

- A. The Contractor shall meet with the City within two weeks of request from Austin Energy to develop electronic invoicing and reporting processes and formats. To the extent possible, these electronic processes and formats will be mutually agreed upon. However, the City's requirements must be met as a minimum.
- B. Contractor shall capture the following job information for each work release by the City to the Contractor for each project: project name and step or segment number (ex. SL01 LF00669), work request number (provided by the City), dates work performed, (City's) inspector name, crew identification, Contractor Invoice Number, bid units worked, quantity per unit, submittal date. In addition to the units worked, the Contractor shall capture the following information:
  - i. Individual crew time shall be broken down by labor hour (LH), for the following: Pruning LH, Removal LH, Vegetation Suppression LH, Supervisor LH, and Non-productive LH.
  - ii. Production information shall be gathered for the following: number of Vegetation Work Plans (VWP's) completed.
- C. Upon Completion of each work release, or on a weekly basis, Contractor shall provide the job information via one of two delivery methods:
  - i. Create an electronic text file (in a predefined format by the City ) and upload the text file into the shared web application developed and hosted by the City; Or
  - ii. Perform direct data entry into shared web page developed and hosted by the City. The City will assign a unique worksheet ID for each job received. The Contractor shall correct any system validation errors prior to submitting the worksheets to the City.
- D. City will verify the job information provided by Contractor. If the data entered contains no errors, it will be accepted by the City and given an Approved status. If the job information contains errors, it will not be accepted by the Inspector and the City will communicate the errors to the Contractor. In this event, the Contractor shall correct the worksheet online and resend the job information to the City.
- E. The City will consolidate all invoices with an Approved status and group these into a Batch, typically on a weekly basis.
- F. The City will generate a Batch Detail Report for Contractor's review and reconciliation. This report will be made available on the shared web page. Each Batch Detail Report will be grouped by individual worksheets (individual work requests), and show the total invoice amount that will be paid based upon the job information submitted by the Contractor. For those Batch Detail Reports that are deemed acceptable by the Contractor, Contractor shall prepare and send a Master Invoice (on their letterhead with their correct remittance address, date, batch number, total amount and City's

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address) to the City. The Contractor shall approve the batch online. Any errors discovered by the Contractor during their review, must be forwarded to the City's Contract Management Representative or designee in writing for review and possible correction. Individual Worksheets within the Batch Detail Report that are identified as possessing an error may be deleted from the original Batch Detail Report. Once resolved, the Contractor must create a replacement worksheet and resubmit it for payment on the next batch. When the batch is approved, the City processes and closes the batch and then forwards the master invoice to the City's Payments Section for payment authorization.

Changes cannot be made to a closed invoice batch, nor can the payment method associated with a work request be changed if the invoice worksheet is in a closed invoice batch.

- G. Reference Exhibit I for specific information regarding the Austin Energy Invoice Process, Invoice Data Field Information Requirements, and a Sample Text File.
- H. Worksheet File/Work Entry Process & Schedule—Work releases may be processed for work completed weekly with final invoice being processed within thirty (30) days of completion after all outstanding charges have been presented and entered. Immediately after Contractor's review and verification to the correctness of the Batch Invoice Report, the Contractor shall provide City with an email acceptance notice and Master Invoice in order for City to proceed in making final payment. Contractor's review of the Batch Invoice, Acceptance Acknowledgement, and issuance of their Master Invoice shall be performed in a timely manner but in no circumstances later than seven (7) business days from receipt of the Batch Invoice Report from the City.
- I. Contractor's Upload of Worksheet Files or Key Entry thereof—Contractor shall either upload or manually enter individual project work sheet data files into City's Contractor Invoice Application no later than 20 calendar days after final completion of the individual work release.  
  
If after the close of business on the 20<sup>th</sup> day, Contractor has not submitted the required information into the City's system, and has not notified the City in writing as to the reason for the delay, the City may request and Contractor agrees to a performance credit in the amount of 25% from the total amount owed.
- J. Contractor's Resubmittal of Corrected Worksheets – Contractor shall correct and resubmit worksheets into the City's Contractor Invoice Application no later than five (5) business days after the worksheet has been returned by Austin Energy.
- K. Rounding of Invoice Hours—Hours shall be recorded to the nearest quarter hour (15 minutes). Calculation shall be made by rounding up if the actual time is 7.5 minutes or more into the next quarter hour or rounding down if actual time is less than 7.5 minutes into the next quarter hour.
- L. Work Must be Authorized—Upon Contractor's receipt of their Notice-to-Proceed from the Contract Manager, all work assigned thereafter to the Contractor shall be authorized either in writing or verbally by the Project Manager or designee. Any expenses incurred by Contractor for projects which have not been so authorized, shall not be billable to the City.
- M. In addition to any other rights, the City may withhold payment on any invoice in whole or in part as necessary to protect the City against costs, expenses, or liability attributable to any disincentive payments incurred by the Contractor.
- N. The City reserves the right to modify this process and/or implement a new process with thirty days written notice to Contractor.

**10. HAZARDOUS MATERIALS:**

- A. If this Solicitation involves hazardous materials, the Offeror shall furnish with the Offer Material Safety Data Sheets (MSDS), (OSHA Form 20), on all chemicals and hazardous materials specifying the generic and trade name of product, product specification, and full hazard information including receiving and storage hazards. Instructions, special equipment needed for handling, information on approved containers, and instructions for the disposal of the material are also required.

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- B. Failure to submit the MSDS as part of the Offer may subject the Offer to disqualification from consideration for award.
- C. The MSDS, instructions and information required in paragraph "A" must be included with each shipment under the contract.
- D. Contractor shall be responsible for coordinating any exchange or material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with laws and regulations.

11. **LIVING WAGES:**

**The City's Living Wage Program, Rule R161-17.14, is located at:**

<http://www.austintexas.gov/edims/document.cfm?id=277854>

- A. The minimum wage required for all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract is \$15.00 per hour, unless Published Wage Rates are included in this solicitation. In addition, the City may stipulate higher wage rates in certain solicitations in order to assure quality and continuity of service.
- B. The City requires Contractors submitting Offers on this Contract to provide a certification (**see the Living Wages Contractor Certification included in the Solicitation**) with their Offer certifying that all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$15.00 per hour. The certification shall include a list of all Contractor Employees (and all tiers of Subcontracting) directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.
- C. The Contractor shall maintain throughout the term of the resultant contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA).
- D. The Contractor shall provide to the Department's assigned Contract Manager with the first invoice, individual Employee Certifications for all Contractor Employees (and all tiers of Subcontracting) directly assigned to the contract. The City reserves the right to request individual Employee Certifications at any time during the contract term. Employee Certifications shall be signed by each Contractor Employee (and all tiers of Subcontracting) directly assigned to the contract. The Employee Certification form is available on-line at:  
[https://www.austintexas.gov/financeonline/vendor\\_connection/index.cfm](https://www.austintexas.gov/financeonline/vendor_connection/index.cfm).
- E. Contractor shall submit employee certifications for Contractor Employees (and all tiers of Subcontracting) annually on the anniversary date of contract award with the respective invoice to verify that employees are paid the Living Wage throughout the term of the contract. The Employee Certification Forms shall be submitted for Contractor Employees (and all tiers of Subcontracting) added to the contract and/or to report any employee changes as they occur.
- F. The Department's assigned Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records required in paragraph C above to verify compliance with this provision.

12. **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING:**

- A. On June 14, 2018, the Austin City Council adopted Ordinance No. 20180614-056 replacing Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). The City requires Offerors submitting Offers on this Solicitation to certify that the Offeror has not in any way directly or indirectly had

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communication restricted in the ordinance section 2-7-104 during the No-Lobbying Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at: [https://assets.austintexas.gov/purchase/downloads/New\\_ALO\\_Ordinance\\_No\\_20180614-056.pdf](https://assets.austintexas.gov/purchase/downloads/New_ALO_Ordinance_No_20180614-056.pdf) and is also included in the Solicitation, [Section 0200 V2, Solicitation Instructions June 26, 2018](#).

13. **WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):**

- A. Contractors are required to obtain a certified criminal background report with fingerprinting (referred to as the “report”) for all persons performing on the contract, including all Contractor, Subcontractor, and Supplier personnel (for convenience referred to as “Contractor’s personnel”).
- B. The report may be obtained by reporting to one of the below governmental entities, submitting to fingerprinting and requesting the report [requestors may anticipate a two-week delay for State reports and up to a four to six week delay for receipt of a Federal report.].
  - i. Texas Department of Public Safety for any person currently residing in the State of Texas and having a valid Texas driver’s license or photo ID card;
  - ii. The appropriate governmental agency from either the U.S. state or foreign nation in which the person resides and holds either a valid U.S. state-issued or foreign national driver’s license or photo ID card; or
  - iii. A Federal Agency. A current Federal security clearance obtained from and certified by a Federal agency may be substituted.
- C. Contractor shall obtain the reports at least 30 days prior to any onsite work commencement. Contractor also shall attach to each report the project name, Contractor’s personnel name(s), current address(es), and a copy of the U.S. state-issued or foreign national driver’s license or photo ID card.
- D. Contractor shall provide the City a Certified Criminal Background Report affirming that Contractor has conducted required security screening of Contractor’s personnel to determine those appropriate for execution of the work and for presence on the City’s property. A list of all Contractor Personnel requiring access to the City’s site shall be attached to the affidavit.
- E. Upon receipt by the City of Contractor’s affidavit described in (D) above and the list of the Contractor’s personnel, the City will provide each of Contractor’s personnel a contractor ID badge that is required for access to City property that shall be worn at all times by Contractor’s personnel during the execution of the work.
- F. The City reserves the right to deny an ID badge to any Contractor personnel for reasonable cause, including failure of a Criminal History background check. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor’s reports. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the contract, the Contractor shall so notify the City’s Contract Manager, in writing, within ten (10) calendar days of the receipt of notification of denial.
- G. Contractor’s personnel will be required to wear the ID badge at all times while on the work site. Failure to wear or produce the ID badge may be cause for removal of an individual from the work site, without regard to Contractor’s schedule. Lost ID badges shall be reported to the City’s Contract Manager. Contractor shall reimburse the City for all costs incurred in providing additional ID badges to Contractor Personnel.
- H. ID badges to enter and/or work on the City property may be revoked by the City at any time. ID badges must be returned to the City at the time of project completion and acceptance or upon removal of an individual from the work site.

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- I. Contractor is not required to obtain reports for delivery personnel, including but not limited to FedEx, UPS, Roadway, or other materials delivery persons, however all delivery personnel must present company/employer-issued photo ID and be accompanied by at least one of Contractor's personnel at all times while at the work site.
  - J. The Contractor shall retain the reports and make them available for audit by the City during regular business hours (reference paragraph 17 in Section 0300, entitled Right to Audit).
14. **MONTHLY SUBCONTRACT AWARDS AND EXPENDITURES REPORT:** (reference paragraph 18 in Section 0300) (applicable when an MBE/WBE Compliance Plan is required)
- A. The Contractor must submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager specified herein and to the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
  - B. Mail the Purchasing Office Copy of the report to the following address:  
  
City of Austin  
Purchasing Office  
Attn: Contract Compliance Manager  
P. O. Box 1088  
Austin, Texas 78767
15. **ECONOMIC PRICE ADJUSTMENT:**
- A. **Price Adjustments:** Prices shown in this Contract shall remain firm for the first 12 months of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed twenty percent (20%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.
  - B. **Effective Date:** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.
  - C. **Adjustments:** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.
  - D. **Indexes:** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.
    - i. The following definitions apply:
      - (1) **Base Period:** Month and year of the original contracted price (the solicitation close date).
      - (2) **Base Price:** Initial price quoted, proposed and/or contracted per unit of measure.
      - (3) **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.

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- (4) **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.
- (5) **Weight %:** The percent of the Base Price subject to adjustment based on an index change.
- ii. **Adjustment-Request Review:** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
  - (1) Utilize final Compilation data instead of Preliminary data
  - (2) If the referenced index is no longer available shift up to the next higher category index.
- iii. **Index Identification:** Complete table as they may apply.

Weight % or \$ of Base Price: 100%	
Database Name: Bureau of Labor Statistics	
Series ID: CEU0500000003	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: National	
Description of Series ID: Average hourly earnings of all employees, total private	
This Index shall apply to the following items of the Price Proposal: 1.1	

Weight % or \$ of Base Price: 100%	
Database Name: CPI	
Series ID: CUUR0000SEHM	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: U.S. city average	
Description of Series ID: Tools, hardware, outdoor equipment and supplies, all urban consumers	
This Index shall apply to the following items of the Price Proposal: 1.2	

Weight % or \$ of Base Price: 100%	
Database Name: PPI	
Series ID: WPU06530109	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: N/A	
Description of Series ID: Chemicals and allied products- agricultural and commercial pesticides and chemicals	
This Index shall apply to the following items of the Price Proposal: 1.3	

E. **Calculation:** Price adjustment will be calculated as follows:

**Adjustment of a Portion of the Base Price:** A portion of the Base Price changes such that only part of the price is adjusted, while the balance of the Base Price remains fixed. The portion of the Base Price subject to adjustment is defined in D iii. above.

Index at time of calculation	
Divided by index on solicitation close date	

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Equals change factor
Multiply the Base Price by the portion of Base Price subject to change = weighted portion
Multiply the weighted portion times the change factor
Equals the Adjusted Price for the portion of the Base Price subject to the Index change
Add the portion of the Base Price not subject to adjustment
Equals the Adjusted Price

F. If the requested adjustment is not supported by the referenced index, the City, at its sole discretion, may consider approving an adjustment on fully documented market increases.

16. **INTERLOCAL PURCHASING AGREEMENTS:** (applicable to competitively procured goods/services contracts).

- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.
- B. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.

17. **WORKING ON OR NEAR ENERGIZED EQUIPMENT – ARC FLASH PROTECTION (reference Section 0300 Paragraph 11. Compliance With Health, Safety, and Environmental Regulations):** Contractor's employees shall wear at all times the proper personal protective equipment and clothing required for the head, face, torso, arms, hands, and lower body that provides a minimum Arc Thermal Protection Value (ATPV) of 12 calories per square centimeter (cal/cm<sup>2</sup>) when working on or near energized electrical equipment, or greater, if required by the NFPA Standard 70E and/or Article 410 of the NESC for the work being performed.

18. **FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003 (FACTA)**

- A. The City requires Offerors submitting Offers on any Solicitation which may utilize or access City Customer Account Information, directly or indirectly, to provide a signed affidavit certifying that the Offeror has reviewed the red flags that the City has identified as potential indicators of unauthorized access to consumer information and malicious account activity and agrees to exercise due diligence, in accordance with reasonable policies and procedures, to detect, deter and prevent the risk of identity theft (See Exhibit A, FACTA Affidavit). By signing the Affidavit, the Offeror affirms to the City that it maintains its own identity theft prevention program. The City may only award a Contract, to which this provision applies, once the signed and notarized Affidavit is received.
- B. The following red flags have been identified by the City as potential indicator of unauthorized access to consumer information and malicious account activity:
  - Documents provided by a customer or potential customer to verify identification appear altered or forged.
  - The photo or physical description on an identification document ("ID") is not consistent with the appearance of the customer.
  - Other information given to open the account is not consistent with the ID of the customer
  - An application or supporting document appears to have been forged or altered, or gives the appearance of having been destroyed and reassembled.

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- The ID is inconsistent with external information sources; i.e., the address does not match a consumer report, or a social security (SS) number has not been issued or is listed on the SS Administration Death Master File.
- The ID provided is associated with an existing identity theft case on file.
- The SS number is the same as customers opening other accounts (or previously used to open an account when the customer states that they have not previously had an account.)
- The customer fails to provide all personal identification information upon request.
- The ID is inconsistent with existing records.
- Change of billing address is followed by multiple change requests to the account.
- Payments are made in a manner associated with fraud. For example, a deposit or initial payment is made and no payments are made thereafter.
- Existing account with a stable history shows irregularities.
- An account that has been inactive for a reasonable period of time is suddenly used.
- The utility is notified of unauthorized changes or transactions in connection with an account.

19. **DATA HANDLING CONTROLS:**

Contractor hereby agrees to the "Data Handling Controls" attached as Exhibit B to this Contract, which constitute the Contractor's minimum required data security program to safeguard the integrity of City Data received by Contractor.

20. **NETWORK ACCESS:**

Contractor shall agree to "Austin Energy's Network Connection Agreement", attached as Exhibit C of the Contract. Contractor shall submit a Remote Access Request Form for each Contractor or Subcontractor employee requiring access to the Austin Energy Network.

21. **PROJECT MANAGER:** The following person is designated as Project Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Joseph Osborne

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Joseph.Osborne@austinenergy.com

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512-322-6930

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**CONTRACT MANAGER:** The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Michael Roche

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Michael.Roche@austinenergy.com

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512-322-6161

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\*Note: The above listed Project and Contract Managers are not the authorized Contact Person for purposes of the **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING Provision** of this Section; and therefore, contact with the Project or Contract Manager is prohibited during the no contact period.

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1. **BACKGROUND**

Austin Energy is the 8<sup>th</sup> largest publicly owned electric utility, with a service area of over 437 square miles and more than 5,000 miles of overhead electric distribution lines. Safety is one of Austin Energy's top priorities, and vegetation management (VM) around energized lines is critical to ensuring the public's safety.

2. **PURPOSE**

The City of Austin Electric Utility dba Austin Energy (Austin Energy) seeks a Contractor experienced and qualified in performing VM services on streetlight and nightwatchman security lights and wires for Austin Energy's VM Program. Nightwatchman lights reside on property that is not owned by the City of Austin. This work shall include tree pruning and/or removal and suppression of various types of vegetation growing within Austin Energy's electrical facilities, utility easements and rights-of-way.

There will be one Contract awarded and it will be utilized exclusively by Austin Energy. The Contractor shall be responsible for performing all types of VM including the following streetlight and nightwatchman light and wire work for approximately 60,000 lights, and generally below 600V:

- A. **Capital Improvement Projects (CIP)** - All VM involved in the installation or maintenance of streetlight and nightwatchman lights and wires for Austin Energy's electrical facilities.
- B. **Maintenance** - Scheduled VM on streetlight and/or distribution circuits, grid or substation basis that addresses all potential tree-related reliability concerns.
- C. **After-Hours, Storm Restoration Events, and/or Priority Response** - VM request from Austin Energy personnel to address an area on a streetlight and/or distribution circuit, typically designated by a line device or line segment that is having reliability, safety and/or customer concerns.
- D. **Individual Customer Requests (Tickets)** - All VM associated with streetlight and nightwatchman light and wires addressing individual customer requests at one property location.
- E. **Vegetation Suppression** – Integrated VM using a directed, individual application for the maintenance of the Austin Energy's electrical system.

3. **REGULATIONS RELATING TO WORK**

Contractor shall perform all work in accordance with the Contract, including all applicable regulations, codes, Specifications and/or standards. Contractor shall obtain Austin Energy's written consent in the event of deviations from the Contract. The code, Specification, or standard referred to, except as modified in the Specifications, shall have full force and effect as though printed in the Specifications. These include but are not limited to:

- A. Occupational Safety and Health Administration (OSHA) 29CFR 1910.269 Electric Power Generation, Transmission, & Distribution
- B. Electric Hazards Awareness Program (EHAP)
- C. American National Standards Institute (ANSI) A300, (Part 1) – 2017 Pruning - "Tree, Shrub and Other Woody Plant Management—Standard Practices (Pruning)"

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- D. ANSI Z133- 2017, “For Arboricultural Operations – Safety Requirements”
- E. City of Austin Environmental Regulations and other applicable Federal, State and Local ordinances and laws
- F. International Society of Arboriculture (ISA) Certification
- G. Texas Department of Agriculture (TDA) Certification

Any material, method, or procedure specified by reference to a specific standard or Specification, such as a commercial standard, Federal or State specification, industry or government code, trade association code or standard, or other similar standard, shall comply with the requirements in the latest revision thereof and any amendments or supplements thereto. If the governmental requirements are different from Austin Energy’s the Contractor shall follow the more stringent guidelines.

**4. Safety**

- A. Contractor shall initiate, maintain and supervise all safety practices and programs in connection with the work. Contractor shall provide the necessary protection to prevent damage, injury or loss to all persons as well as real and personal property which may be affected by the work. All damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by Contractor shall be remedied by Contractor.
- B. All work performed in the vicinity of energized electric systems has inherent risks, and because safety for employees and the general public is of the highest concern, Austin Energy has set forth certain safety guidelines within Austin Energy’s Utility Safety Manual. The intention of this manual is to provide workers a set of “minimum” guidelines. Whenever working on or near Austin Energy’s energized system and whenever working with or in the close proximity of Austin Energy’s crews, Contractor shall adhere to all pertinent rules and regulations provided in Austin Energy’s Utility Safety Manual (latest version) and all safety policies and procedures set forth by Austin Energy. In the event of a conflict between Austin Energy’s Utility Safety Manual and any applicable Federal, State or local safety laws, rules, regulations or standards, the more stringent standard shall apply. Austin Energy encourages additional safety measures whenever conditions warrant.
- C. In emergencies affecting the safety or protection of persons or the work at the site or adjacent thereto, without special instruction or authorization from Austin Energy, Contractor shall promptly and reasonably act to prevent damage, injury, or loss and to mitigate damage or loss to the work.
- D. If there is an accident involving injury to any individual on or near the work, Contractor shall notify Austin Energy immediately by phone of the incident after insuring the safety of the Contractor’s workers and any other affected parties. Contractor shall record the location of the event and the circumstances surrounding the event through photographs, interviewing witnesses, obtaining medical reports and other documentation that describes the event. Copies of such documentation shall be provided to Austin Energy within forty-eight (48) hours of the event.
- E. If there is an accident that causes damage to Austin Energy’s property or any third-party property, Contractor shall notify Austin Energy immediately by phone of the damage after insuring the safety of the Contractor’s workers. Contractor shall follow up this verbal notification with written notification and investigation of the incident, including any

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disciplinary actions to Austin Energy, within five (5) working days of the incident.

**5. Tasks/Requirements**

- A. Contractor shall assume and be solely responsible for all cost and risk resulting from Contractor's failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents of which Contractor knew or reasonably should have known.
- B. Kick Off Meeting: Within thirty (30) calendar days of Contract execution, Austin Energy will coordinate a kick-off meeting with the Contractor. Contractor shall not perform work prior to the kick-off meeting and approval of Austin Energy.
- C. Facilities Information:
  - i. Coverage Area: The geographical area in which the work is to be performed lies predominantly within Austin Energy's electric service territory. However, the Contractor may be required to manage all vegetation within the electrical system easements, rights-of-way, and substation facilities or generating plants either owned or operated by Austin Energy, at Austin Energy's request.
  - ii. Easements: The Utility easements and rights-of-way may be adjacent to public streets and roads or may be situated along the rear or side lot lines of individual properties. Access to easements may be limited due to the construction of property owner fences and other obstructions.
  - iii. Work Zones: The work sites will be divided geographically into a Northern and Southern Zone. The Northern Zone generally includes the portion of Austin Energy's electric utility service area north of Martin Luther King Boulevard, extending out to the eastern and western service area boundaries. The Southern Zone includes the portion of the Austin Energy Service Area south of Martin Luther King Boulevard, extending out to the eastern and western service area boundaries.
- D. Work Assignments: On an as-needed basis, Austin Energy will assign to Contractor the specific street and nightwatchman light work projects to be performed. Work may include identifying the particular lines, easement, or rights of way to be cleared, production benchmarks, and the order of/ schedule for performing the work. This work will be designated as needed for the Contractor in the scheduled Thursday weekly planning meetings. Electrical system Individual Customer (Ticket)/ Austin Energy requests, and Capital Improvements Projects work will be assigned as needed to meet construction need dates and maintain electric service reliability.

Contractor shall furnish all labor and equipment necessary to perform VM streetlight and nightwatchmen services as assigned at the relevant labor hour billing rate.

Work Hours and Billing Categories:

- i. Regular Time: Normal crew work hours shall be between the hours of 6:30 am and 6:30 pm Monday through Friday, unless otherwise specified by the Austin Energy. However, the Contractor shall have sufficient skilled personnel and equipment available for all hours of the day or night and in all types of weather conditions to perform all work activities covered under this contract. The Contractor shall be responsible for assembling required After Hours or Priority Response personnel within forty-five (45) minutes from receiving the request from Austin Energy.

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- ii. Overtime Billing Rates: Defined as hours worked by Contractor's personnel after first obtaining forty regular hours at the request of Austin Energy. Overtime must be approved in advance by Austin Energy. Any periods of non-productive time are at the Contractor's expense and not billable to Austin Energy. Rate shall be inclusive of all costs.
  - iii. After Hours: Defined as services requested by Austin Energy on a priority basis in response to an electric system reliability and safety disturbance, or weather-related conditions requiring the Contractor to call out personnel outside of normal crew work hours and personnel are under forty (40) hours. Once Contractor personnel reach forty (40) hours, bill rates shift to the Overtime billing rate. The Contractor shall be responsible for assembling required After Hours or Priority Response personnel within forty-five (45) minutes from receiving the request from Austin Energy.
  - iv. Priority Response: Defined as services requested by Austin Energy on a, temporary priority basis in response to an electric system reliability and safety disturbance or weather-related conditions requiring the Contractor to call out personnel. Austin Energy may require Contractor to supply crews from outside of the Austin Energy Service Territory, and Austin Energy Project Manager may approve Contractor to charge the current United States General Services Administration Domestic Per Diem Rates per paragraph 14 of Section 0300. Per Diem charges not approved in advance by Austin Energy Project Manager will not be paid. Contractor personnel engaged under the priority response category shall be billed as applicable under Regular Time or Overtime bill rates based on hours worked under this Contract.
- E. Weekly Planning Meetings: Unless otherwise approved by Austin Energy's Project Manager or designee, Contractor's personnel shall meet with Austin Energy on a weekly basis to receive assignments, discuss status and any other issues as determined by Austin Energy Project Manager. Unless otherwise agreed upon in advance by Austin Energy, Contractor's Field Representative or General Foreman shall attend each meeting at a time and location determined by Austin Energy. If the Contractor is unable, in whole or in part, to comply with any work assignments, including the schedule and order of performance, the Contractor shall promptly notify the Austin Energy in writing, identifying the work assignments and the reasons why the Contractor will be unable to perform the work assignments as ordered. Austin Energy will meet with the Contractor's representatives to adjust the work schedule as mutually agreed. Austin Energy will notify the Contractor of Contractor deficiencies.
- F. Site Cleanup: Upon completion of the work activity at each location, Contractor shall promptly remove all equipment in conformance with all applicable ordinances, laws, rules and regulations and to the satisfaction of Austin Energy and of the respective property owners. All trash generated (i.e. lunch bags or drinking cups) through the daily work activity shall be picked up and properly disposed of at the end of each day.
- G. Debris Disposal: Upon completion of the work activity at each location, or when leaving the location for the day, Contractor shall dispose of all brush and debris in accordance with Exhibit F – Tree Pruning and Line Clearance Specifications, X. Disposal of Cut Material. The Contractor shall, at the request of Austin Energy, provide brush and debris pickup and disposal for any work resulting from line clearing performed by Austin Energy's forces.

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- H. Damages: Every effort shall be made to protect all property that may be affected by the work. Contractor shall repair any damage to the property owner's premises caused by the Contractor at Contractor's sole cost. If the Contractor causes damages to the property owner's premises in violation with any Federal, State or local ordinances or regulations, the Contractor will be solely responsible for making the necessary mitigation or restitution.
- I. Changes to the Work: Contractor shall have the ability to adjust the work force if necessary, within thirty (30) calendar days of written request from Austin Energy. If the Contractor cannot adjust, Contractor must provide written justification to Austin Energy within ten (10) calendar days of the initial request. If the adjustment (in labor, equipment, and/or production levels) cannot be met by the Contractor, Austin Energy reserves the right to procure services from another supplier at Austin Energy's discretion.
- J. Contractor Requirements
- i. Contractor shall comply with the requirements and/or instructions of Austin Energy in the performance of all work and meet all required deadlines.
  - ii. Prior to commencing any work, Contractor shall become familiar with the location and nature of any electrical facilities involved and shall always carefully guard against any interference with the normal operation of such facilities. All work shall be performed in accordance with all applicable Specifications and requirements, including, but not limited to the Tree Pruning and Line Clearance Specifications and Requirements (Exhibit F).
  - iii. Contractor shall avoid unnecessary interference with concurrent activities of other Contractors and Austin Energy forces at the work site.
  - iv. Contractor shall not interfere with the use of public and private roads and shall provide and maintain suitable detours or other temporary expedients if necessary.
  - v. Contractor shall conduct the work in a manner to avoid unnecessary noise and other disturbance and shall cooperate with other occupants of the premises.
  - vi. Contractor shall be responsible for determining if permits are required. Unless otherwise agreed upon by both parties, all other required permits (Capital Metro, Travis County, Williamson County, Hays County, or other regulatory entities as may be required) shall be obtained and maintained by Contractor and upon Austin Energy approval, reimbursable by Austin Energy after submission of a proper invoice including backup documentation. Austin Energy will submit for Austin Transportation Department permits only for the Contractor. Reimbursement of permit is for the cost of the permit only.
  - vii. Contractor and/or its employees shall not solicit work or prune, remove, or perform any other work on trees, or remove any brush, under this Contract at the request of any party other than Austin Energy, including, any utility customer or property owner without the prior consent of Austin Energy. Any solicitation of work or any VM for entities other than Austin Energy shall not occur while Contractor is performing services for Austin Energy.
  - viii. Prompt response and execution of work, both routine and during periods of

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priority response or interruptions of electric service, are the most important requirements of this Contract. Contractor may be required to mobilize their forces on short notice at all hours of the day, and in all kinds of weather.

- ix. Each crew is required to begin each workday with an empty chip dump bed. The Contractor, either before or after work hours, shall dump the final daily load of chips, unless approved in writing by Austin Energy. Travel time from the equipment yard(s) to any job location within Austin Energy's service area shall not exceed a maximum of 45 minutes, unless agreed to in writing in advance by Austin Energy. Satellite yards may be required by Austin Energy if the travel time exceeds 45 minutes.
- x. Austin Energy reserves the right during the Contract period to modify or alter the systems and/or processes used in the performance and administration of this Contract with a minimum of thirty (30) days written notice to Contractor.
- xi. Contractor crews working on VM for distribution line clearance of street and nightwatchman lights for Austin Energy's service territory cannot be assigned additional work on other contracts without prior written approval by Austin Energy, which will not be unreasonably withheld.
- xii. Contractor shall comply with Exhibit G - Customer Notification Process. All Contractor personnel shall communicate effectively and professionally with Austin Energy's customers at all times.
- xiii. Worker breaks for water, rest, etc., shall be taken individually with the exception of lunch. Personnel are not to stop at stores for food, drink or personal items during the workday, unless otherwise approved by Austin Energy
- xiv. Smoking or vaping is not permitted on Austin Energy or customer's property.
- xv. All Contractor employees shall present a professional appearance and dress in a manner appropriate with impending environmental conditions (i.e. rain gear or winter clothing) allowing for the work to be performed in a safe and efficient manner. Each crewmember shall wear a standard company-identifying article of clothing that will readily identify personnel as employees of the Contractor. Proper personal protective equipment shall be worn by all personnel when working in the field.
- xvi. Contractor shall furnish qualified and experienced VM personnel as required by the Austin Energy and other State and regulatory agencies. Contractor personnel shall meet minimum requirements for CPR, TXDOT and TDA. Austin Energy may also require Contractor personnel to acquire additional training and certifications, such as Railroad safety training, and Competent Person for Work Zone Traffic Control training as necessary to perform Distribution VM services and billable to Austin Energy. All of the minimum personnel qualifications are cumulative.
- xvii. Contractor minimum requirements for labor classifications and requirements by position are located in Exhibit D – Labor Descriptions. Any deviations in requirements for Contractor personnel must be submitted in writing to the Austin Energy and approved by the Austin Energy before any changes may occur.
- xviii. A minimum of one on-site Supervisor to support contract personnel will be required.

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- xix. Minimum Staff Requirements: The following minimum staffing requirements shall be adhered to by the Contractor without prior written approval by the Austin Energy Project Manager.
- a. Initial Ramp up: within forty-five (45) calendar days of Contract execution, Contractor shall have a minimum of 1 Field Representative, 1 General Foreman, 1 Working Foreman, 1 2-man Lift Truck Crew, 1 3-Man Manual Crew.
  - b. Within sixty (60) calendar days of Contract execution, Contractor shall have a minimum of 1 Field Representative, 1 General Foreman, 2 Working Foreman, 2 2-man Lift Truck Crews, 2 3-Man Manual Crews.
  - c. Within ninety (90) calendar days of Contract execution, Contractor shall have a minimum of 1 Field Representative, 1 General Foreman, 2 Working Foreman, 3 2-man Lift Truck Crews, 3 3-Man Manual Crews.
  - d. Ongoing Staffing Needs: Upon written notice by Austin Energy, Contractor shall provide additional staff beyond the minimum staffing requirements stated above within thirty (30) calendar days of written notification.
  - e. Contractor shall have a drug screening program that meets or exceeds industry best practices.
  - f. Contractor and employees shall have certifications and licenses as required by Classification identified in Exhibit D - Labor Descriptions prior to issuing work.
  - g. Staff level changes: In the event that Contractor proposes to shift Contractor personnel to different labor classification billing categories, Contractor shall submit a written request to Austin Energy, including associated resume(s) and certification(s) thirty (30) calendar days prior to the requested change. Austin Energy has the right to approve or not approve the requested change.
- xx. Materials and Equipment:  
Contractor shall furnish, at Contractor's expense, all necessary equipment (tools, computers, trucks, etc) and materials (chemicals) to perform VM streetlight and nightwatchmen services within the distribution and transmission system easements, rights-of-way, and substation facilities or generating plants either owned or operated by Austin Energy.
- a. Contractor shall ensure that staff have access to and are appropriately trained on all system requirements.
  - b. The system shall have:
    - 1) Adequate telephone service.
    - 2) LaserJet printer to print vegetation work plans and other Austin Energy information on a daily basis as required.
    - 3) Software and hardware shall be upgraded as called upon to interact with Austin Energy's systems.
    - 4) A copier to ensure all paperwork is handled in a timely manner.
    - 5) Available support staff during normal business hours on regular business days.
    - 6) The capability of accessing and downloading tax plats from various Tax Appraisal Districts and perform other work as specified by Austin Energy.
  - c. Communications: Contractor shall furnish and maintain dependable cellular phones for Contractor supervisory, general foreman, work foreman and Pre-

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Planner personnel as required by Austin Energy at the Contractor's expense. The equipment provided shall allow Austin Energy's personnel and Contractor supervision to communicate with all Contractor crews and Austin Energy either directly or indirectly while they are either in or out of their vehicles. The cellular phones shall send and receive phone calls as well as text messages to and from all makes of phones and cell phone providers. The cellular phones may be evaluated yearly and the Contractor shall make changes as necessary to maintain communications and ensure adequate coverage in outage restoration situations.

d. System requirements: Contractor shall provide a portable computer/tablet capable of supporting Austin Energy's web based and field client-based VM program to be billed at a per month, per unit rate as specified in Exhibit E-Employee/Equipment/Materials Rate Form. Pricing will be prorated by calendar day of use if a full calendar month is not utilized. During the term of the resulting contract, Austin Energy will provide computer/tablets for work planning to replace the Contractor provided devices. Software and hardware systems shall be upgradeable, and Contractor shall maintain compatibility as called upon to interact with Austin Energy's systems. These computers/tablets shall be used in the field by the Field Representative, general foreman and Pre-planners to review information required to complete work plans on each property, including but not limited to size and species of tree, the clearance required on different types of lines, herbicide application, the size and species of any removals.

The computers/tablets shall capture and save the property owner's signature, the Contractor personnel or Pre-planner's signature, any changes in original work plan, the name of the foreman who performed the work and the date that the work was assessed, signed off, and completed. The system shall print hard copies of information for crews, Austin Energy, and property owners. The computers/tablets shall have Wi-Fi, hot spot or air card capabilities for the ability to update/synchronize data entries in the field. Each computer/tablet shall update/synchronize all data throughout the day to Austin Energy's field client programs as often as possible and shall update/synchronize at the end of each work day.

- e. Contractor shall return all Austin Energy issued items within 1 business day of request by Austin Energy, the separation of employment of Contractor's employee, or the utilization of Contractor's employee by another of Contractor's customers, whichever is earlier.
- f. Equipment and Labor Availability - Contractor shall be solely responsible for the care, preservation, conservation or protection of any materials, tools or machinery owned, leased or employed by the Contractor or issued by Austin Energy for Contractor's use under this Contract.
- g. All equipment required by this Contract and used by Contractor for performance of work shall be free of any defects and shall be in good repair and maintained in a safe and operable condition. Austin Energy may direct the Contractor to remove or replace equipment or machinery that is not

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functioning properly. Contractor shall have readily available back-up equipment to maintain the existing personnel functions.

- h. Contractor shall perform all refueling of trucks and equipment and any required maintenance, either before or after the scheduled workday, unless otherwise directed by Austin Energy.
- i. All vehicles must be equipped with a GPS tracking system that can track and show vehicle locations throughout the day. Access to this system shall be available to Austin Energy.
- j. Minimum equipment required for all VM streetlight and nightwatchmen services personnel shall be composed of the following unless otherwise approved by Austin Energy, additional required equipment listed in Exhibit E – Employee/Equipment/Materials Rate Form shall be available on an as-needed basis; the availability of this equipment shall be maintained throughout the duration of the contract. Basic equipment for all working VM crews shall be composed of the following unless otherwise agreed to by Austin Energy:
  - 1) One 4X4 X-Cab Pickup Truck for each (Field Representative, General Foreman
  - 2) One (1) 1 ½ Ton Minimum Manual Crew/Brush Hauling Truck with Chip Dump Bed, 14 Cubic Yards Capacity, or one (1) 50-foot Minimum Working Height Aerial Tower Truck, with 14 Cubic Yard Chip Dump Bed and Hydraulic Saw and Pruner w/attachments, and one (1) 37-foot squirt boom Trucks.
  - 3) One (1) brush chipper 70-HP (minimum) Drum Brush Chipper, 10 inch log capacity, or 185-HP (minimum) whole tree chippers, 18 inch log capacity
  - 4) Necessary safety equipment as required by law and Austin Energy requirements
  - 5) Work area protection cones and traffic signs or signals as required by State and local laws and ordinances
  - 6) All General Foreman and Foreman shall have appropriate vegetation suppression application equipment. At a minimum, this equipment includes a (Labeled) pump-up herbicide sprayer (1 qt to 1 gal sized) and spill prevention equipment
  - 7) Individual equipment for each Crew Foreman and Climber on the crew shall at a minimum, include; ropes, saddle, 14-inch (or larger) chain saw, hand speed-saw, throw-ball, standard (Insulated) pole pruner and pole saw with extensions, applicable personal safety equipment, tree wound dressing and applicator, and tool disinfectant and applicator and cellular phone communication as requested by Austin Energy
  - 8) Rechargeable lighting equipment
  - 9) Any tools necessary to clean up the work site (ie—rake, broom, shovel, leaf blower, etc.) or aid in fire prevention (ie – fire rake, fire tank bag with pump/5 gallon recommended)
  - 10) Contractor shall have access to at least 1 UTV/ATV Vehicle.
  - 11) Unless otherwise stated in writing, items and services required in this contract, but not included in Employee and Equipment Rate Form- Exhibit E

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are considered non-billable items and/or services and are to be provided by the Contractor at no cost to Austin Energy.

- xxi. Storm Damage Restoration Events:  
Contractor shall provide additional personnel and equipment to respond to storm damage to Austin Energy's electrical system when the needs of the Austin Energy exceeds the capabilities of the Contractor's work force currently assigned to Austin Energy, when requested in writing by Austin Energy. When requested by Austin Energy to import a work force on a limited purpose basis, Contractor shall be compensated as follows:
- 1) Compensation to the Contractor for such additional emergency personnel and equipment shall be at the contractual rate of their home base operation. Contractor shall provide documentation sufficient to Austin Energy to support billing rates.
  - 2) Labor overtime rate will be calculated by the hourly rate overtime as indicated in Exhibit E.
  - 3) Contractor's personnel will be billed on a portal to portal basis, and after acquiring forty regular time hours shall be compensated at the appropriate overtime billing rate. Compensation for travel shall be based on the actual time required to drive from the Contractor's remote facilities to the Austin Energy's designated work location and back to Contractor's remote facilities, for each employee imported for the work.
  - 4) In cases when arrangements must be made for meals and lodging for Contractor's imported work force, the following shall apply:
    - a. When required, Contractor shall obtain overnight lodging at the double-occupancy rates for each additional employee brought in from out of Austin Energy's Service Territory and not already performing services under this Contract. Austin Energy shall reimburse Contractor for actual cost incurred or Austin Energy at its discretion may provide lodging for Contractor's imported work force. Any charges incurred other than basic room rental and bed tax shall be the responsibility of the Contractor and shall not be reimbursed by Austin Energy.
    - b. When required, the Contractor shall provide meals to imported work force. Austin Energy shall reimburse Contractor for reasonable and appropriate actual cost of meals, as determined by Austin Energy, for the additional employees brought in from out of town. Contractor shall furnish Austin Energy with copies of receipts or suitable documentation to verify all expenditures. Austin Energy will not provide reimbursement for alcoholic beverages, sundries or non-food items.
  - 5) Contractor, at the Contractor's expense, or as approved in writing, shall provide any additional transportation vehicles and the transporting of additional equipment to Austin Energy's service area by Austin Energy.
  - 6) All other reasonable and appropriate expenses incurred by the Contractor when requested by Austin Energy to import a work force for this limited purpose shall be negotiated in good faith by Austin Energy and Contractor in advance.

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6. **Pre-Planning:** In the event that VM pre-planning services are required, Austin Energy will provide Contractor with a minimum of thirty calendar days notice for a ramp-up period, unless otherwise agreed upon by Contractor. Upon completion of the ramp-up period, Contractor shall:
  - A. Provide 1 VM Pre-Planner Supervisor/Project Manager and 1 VM Pre-Planner per the requirements listed in Exhibit D.
  - B. Upon request of Austin Energy, provide additional VM Pre-Planners within thirty calendar days of request (after the ramp-up period).
  - C. Ensure that Vegetation management Pre-Planners wear a standard company-identifying article of clothing with an “International Society of Arboriculture (ISA) Certified Arborist” patch or identification.
  - D. Provide One 4X4 X-Cab Pickup Truck for each Pre-Planner Supervisor/Project Manager and Pre-Planner.
  - E. Perform Pre-Planning services as required by Austin Energy
  - F. Pre-Planners will be required to perform work planning in accordance with Exhibits F, G and H
7. **No Verbal Agreement:** With the single exception of an emergency, no verbal agreement or conversation with any officer, agent or employee of Austin Energy, either before or after execution of this Contract shall affect or modify Contractor’s obligations under this Section. In case of an emergency request, Contractor may accept verbal instructions, which will be followed with written documentation at the Owner’s earliest convenience.
7. **Errors or Ambiguities:** The Contractor shall report any errors or ambiguities in the Specifications or any work order or assignment to Austin Energy as soon as detected. Austin Energy shall issue a clarification or interpretation that shall be definitive.
8. **Exhibits:** Contractor shall adhere to the requirements and processes set forth in the Exhibits listed below:
  - A. Street and Nightwatchman Light Vegetation Management Labor Descriptions (Exhibit D)
  - B. Employee/Equipment/Materials Rate Form (Exhibit E)
  - C. Tree Pruning and Line Clearance Specifications (Exhibit F)
  - D. Customer Notification Process (Exhibit G)
  - E. Customer Resolution Process (Exhibit H)
  - F. Invoicing Process (Exhibit I)

**Section 0605: Local Business Presence Identification**

A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years, currently employs residents of the City of Austin, Texas, and will use employees that reside in the City of Austin, Texas, to support this Contract. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

**OFFEROR MUST SUBMIT THE FOLLOWING INFORMATION FOR EACH LOCAL BUSINESS (INCLUDING THE OFFEROR, IF APPLICABLE) TO BE CONSIDERED FOR LOCAL PRESENCE.**

*NOTE: ALL FIRMS MUST BE IDENTIFIED ON THE MBE/WBE COMPLIANCE PLAN OR NO GOALS UTILIZATION PLAN (REFERENCE SECTION 0900).*

**\*USE ADDITIONAL PAGES AS NECESSARY\***

**OFFEROR:**

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years?	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

**SUBCONTRACTOR(S):**

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No

Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

**SUBCONTRACTOR(S):**

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

**City of Austin, Texas**  
**Section 0800**  
**NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION**

**City of Austin, Texas**  
**Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy**

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of

this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

CONTRACTOR \_\_\_\_\_  
Authorized  
Signature \_\_\_\_\_  
  
Title \_\_\_\_\_

**Section 0815: Living Wages Contractor Certification**

Pursuant to the Living Wages provision (reference Section 0400, Supplemental Purchase Provisions) the Contractor is required to pay to all employees of the Prime Contractor and all tiers of subcontractors directly assigned to this City contract a minimum Living Wage equal to or greater than \$15.00 per hour.

- (1) The below listed individuals are all known employees of the Prime Contractor and its subcontractors who are directly assigned to this contract, and all are compensated at wage rates equal to or greater than \$15.00 per hour:

Employee Name	Employer	Prime or Sub	Your Normal Rate	Employee Job Title

- (2) All future employees of both the Prime Contractor and all tiers of subcontractors directly assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$15.00 per hour.
- (3) Our firm will not retaliate against any employee of either the Prime Contractor or any tier of subcontractors claiming non-compliance with the Living Wage provision.

A Prime Contractor or subcontractor that violates this Living Wage provision shall pay each of its affected employees the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision by either the Prime Contractor or any tier of subcontractor, or fraudulent statements made on this certification, may result in termination of this Contract for Cause, subject the violating firm to possible suspension or debarment, or result in legal action.

I hereby certify that all the listed employees of both the Prime Contractor and all tiers of subcontractors who are directly assigned to this contract are paid a minimum Living Wage equal to or greater than \$15.00 per hour.

Contractor's Name: \_\_\_\_\_

Signature of Officer or Authorized Representative: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title \_\_\_\_\_

**Section 0835: Non-Resident Bidder Provisions**

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

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "non-resident Bidder"?

Answer: \_\_\_\_\_

- (1) Texas Resident Bidder- A Bidder whose principle place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.
- (2) Nonresident Bidder- A Bidder who is not a Texas Resident Bidder.

- B. If the Bidder id a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state?

Answer: \_\_\_\_\_ Which State: \_\_\_\_\_

- C. If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a Contract on such bid in said state?

Answer: \_\_\_\_\_

**Section 0840, Service-Disabled Veteran Business Enterprise Preference**

<b>Offeror Name</b>
[OFFEROR NAME]

**Additional Solicitation Instructions.**

- By checking this box, Offeror states they are NOT a certified Service-Disabled Veteran Business Enterprise seeking to claim preference points under the City of Austin’s SDVBE Program.
- Offerors seeking to claim the Service-Disabled Veteran Business Enterprise (SDVBE) preference shall be certified **under one of the two following scenarios**. Offerors shall check one of the following boxes, input the data in the applicable table below and include this completed form in their Proposal.
  - HUB/SV**. Offeror is certified as a Service-Disabled Veteran (SV) Historically Underutilized Business (HUB) by the Texas State Comptroller of Public Accounts.

Texas State HUB/SV Certification	
13-Digit Vendor ID (VID)	
HUB/SV Issue Date	
HUB/SV Expiration Date	

- HUB/OTHER + Federal SDVOSB**. Offeror is certified by the Texas State Comptroller of Public Accounts as a Historically Underutilized Business in a HUB Eligibility Category other than Service-Disabled Veteran (SV) AND is verified by the US Veterans Administration as a Service-Disabled Veteran-Owned Small Business (SDVOSB). **Texas HUB Eligibility Categories:** HUB/BL (Black), HUB/AS (Asian), HUB/HI (Hispanic), HUB/AI (Native American), or HUB/WO (Women Owned).

Texas State HUB/OTHER Certification	
13-Digit Vendor ID (VID)	
HUB Eligibility Category	
HUB Issue Date	
HUB Expiration Date	

Federal SDVOSB Verification	
9-Digit DUNS	
SDVOSB Issue Date	
SDVOSB Expiration Date	

- Offeror Identity.** The Offeror submitting the Proposal shall be the same entity that is certified by the Texas State Comptroller of Public Accounts, AND if applicable as verified by the US Veterans Administration.
- Certification Status.** Offeror’s certification(s) must be active on or before the Solicitation’s due date for Proposals and shall not expire prior to the award and execution of any resulting contract.
- Confirmation of Certification(s).** Upon receipt of this completed form, the City will confirm the Offeror’s certification(s): State: <https://mycpa.cpa.state.tx.us/tpasscmbsearch>. Federal: <https://www.vip.vetbiz.gov/> The City will direct any questions concerning an Offeror’s State or Federal certification status to the Offeror’s contact person as designated on the Offer Form of their Proposal.
- Misrepresentation.** If the City determines that the Offeror requesting this preference is not certified by the State or Federal government if applicable, the Offeror will not receive the preference points. If the City determines that this misrepresentation was intentional, the City may also find the Offeror not responsible and may report the Offeror to the Texas State Comptroller of Public Accounts or if applicable to the US Veterans Administration. If the misrepresentation is discovered after contract award, the City reserves the right to void the contract.

# CITY OF AUSTIN



## CITY CODE CHAPTER 2-9C NON-PROFESSIONAL REQUIREMENT BASED CONTRACTS MBE/WBE PROCUREMENT PROGRAM

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**Solicitation Name:** Distribution Line Clearance, Street and Nightwatchman

**Solicitation Number:** RFP 1100 EAL3011REBID

**Issue Date:** 04/22/2020

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## MBE/WBE GOALS

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<b>Annual/Project Participation Goals</b>		<b>OR</b>	<b>Annual/Project Participation Subgoals</b>	
MBE	_____		African American	_____ %
WBE	_____		Hispanic	_____ %
Combined MBE/WBE	4.33		Asian/Native American	_____ %
	_____		WBE	_____ %

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## OVERVIEW

This document should be read in conjunction with the City of Austin’s Minority-owned and Women-owned Business Enterprise Procurement Program Ordinance for Commodities (Chapter 2-9C of the Austin City Code) and the Small and Minority Business Resources Department (SMBR) Rules. The definitions contained in Chapter 2-9C apply to this document. The City Code and Rules are amended from time to time and the Proposer is responsible for ensuring they have the most up to date version. The City Code and Rules are incorporated into this document by reference. Copies of Chapter 2-9C and SMBR Rules may be obtained online at <http://www.austintexas.gov/smbdocuments> or from SMBR, 4201 Ed Bluestein, Austin, Texas 78721 (512) 974-7600.

Firms or individuals submitting responses to this Request for Proposal agree to abide by the City’s Minority-owned and Women-owned Business Enterprise (MBE/WBE) Procurement Program and Rules. The City’s MBE/WBE Program is intended (1) to promote and encourage MBEs and WBEs to participate in business opportunities with the City of Austin; (2) to afford MBEs and WBEs an equal opportunity to compete for work on City contracts; and (3) to encourage contractors to provide subcontracting opportunities to certified MBEs and WBEs by soliciting such Firm for subcontracting opportunities. The City of Austin and its contractors shall not discriminate on the basis of race, color, national origin, disability, or gender in the award and performance of contracts.

The City encourages Proposers to achieve the MBE/WBE participation goals and subgoals for this contract. However, Proposers may comply with the City Code and Rules without achieving the participation goals so long as they make and document Good Faith Efforts that would allow MBE and WBE participation per Section 2-9C-21 of the City Code and Section 9.1 of the Rules. Proposers that do not meet the project’s goals and subgoals are subject to Good Faith Efforts review.

Prior to the due date and time specified in the City’s solicitation documents, all Proposers (including those Firms certified as MBE/WBEs) shall submit: (1) an *MBE/WBE Compliance Plan* (Appendix A) and (2) if it is anticipated the project goals will not be met, all appropriate documentation to demonstrate Good Faith Efforts to meet the project goals. Any questions regarding preparation of the *MBE/WBE Compliance Plan* should be directed to SMBR at [SMBRComplianceDocuments@austintexas.gov](mailto:SMBRComplianceDocuments@austintexas.gov). Such contact is not a violation of the Anti-Lobbying Ordinance.

The City has implemented Anti-Lobbying Ordinance (Chapter 2-7 of the Austin City Code). Under Chapter 2-7, there is a “no-contact” period from the date the City issues a solicitation until the contract is executed. During the “no-contact” period, a person responding to a City solicitation can speak only to the contract’s authorized contact person regarding their solicitation response. Chapter 2-7 allows certain exceptions; for instance, a person responding to a City solicitation may speak to SMBR regarding this *MBE/WBE Compliance Plan*. See the full language of the City Code or solicitation documents for further details.

## **MBE/WBE COMPLIANCE PLAN INSTRUCTIONS**

**(See Appendix A)**

**If the *MBE/WBE Compliance Plan* and Good Faith Efforts documentation are not submitted prior to the due date specified in the solicitation documents, the bid will be deemed non-responsive and not be accepted for consideration.**

SMBR may request written clarification of items listed on the *MBE/WBE Compliance Plan*. However, there will be no further opportunity for the Proposer to augment the MBE/WBE participation originally listed in the *MBE/WBE Compliance Plan* or to demonstrate Good Faith Efforts that were not made prior to the submission of the *MBE/WBE Compliance Plan*. Changes to the *MBE/WBE Compliance Plan* are permitted only after contract execution and only with prior written approval of SMBR.

Please type or clearly print all information, use “none” or “N/A” where appropriate. ***MBE/WBE Compliance Plans not complying with the MBE/WBE Compliance Plan Instructions shall be rejected as non-responsive. Submissions not utilizing the forms provided with the solicitation may render the submission nonresponsive or noncompliant.***

### **Section I Project Identification and Goals**

This section includes the pre-printed Project Name, Project/Solicitation Number, and goals and/or subgoals. The Proposer does not need to fill in any information under Section I.

### **Section II Proposer Information**

The Proposer should complete this section with its information and sign in the space provided. The portion of Section II marked as “Reserved for City of Austin SMBR Only” should be left blank.

### **Section III MBE/WBE Statement of Responsibility**

This Contract is a Requirement-Based service contract that contains work assignments on an as-needed bases. Proposers shall sign the Statement of Responsibility. Failure to sign this section shall result in rejection of the Compliance Plan and the Proposer found non-responsive. Although the specific subcontractor’s participation percentages cannot be determined at this time, the Proposer understands and agrees to meet the solicitation goals utilizing the firms listed on the Compliance Plan as Work Assignments materialize. If the Proposer indicates that they do not anticipate meeting the goals with certified MBE/WBE firms, then the Proposer shall submit documentation detailing their Good Faith Efforts to meet the established MBE/WBE goals.

### **Section IV Disclosure of MBE and WBE Subcontractors**

Please list all certified MBE/WBEs subcontractors using the legal name under which they are registered to do business with the City of Austin and the value of the work they will be performing themselves except for subcontractor(s) that will be performing the trucking or hauling scope of work (see Section VII below). Do not include the value of work that the MBE/WBE’s subcontractors will be subcontracting to second-level subcontractors. By listing certified MBE and WBE Firms on the MBE/WBE Compliance Plan, the Proposer indicates that both parties acknowledge the price and scope of work and that they are prepared to contract for that price and scope if the City awards the project to the Proposer. Unit price subcontracts are acceptable if appropriate to the type of work being performed. A Letter of Intent (LOI) does not replace a binding contract between a prime contractor and a subcontractor.

Before completing Section IV of the *MBE/WBE Compliance Plan*, please read the following instructions regarding how to count MBE/WBE participation:

- (A) Only the value of the work actually performed by the MBE/WBE shall be counted toward the goals. This includes:
- (1) work performed by the MBE/WBE's own forces;
  - (2) the cost of supplies, materials, or equipment purchased, leased, or otherwise obtained by the MBE/WBE for the work of the contract (except that supplies, materials, and equipment purchased or leased from the prime contractor or its affiliate may not be counted toward the goal); and
  - (3) fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a contract, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
- (B) When a Proposer purchases supplies, materials, or equipment from an MBE/WBE, the cost of those supplies, materials, or equipment shall be counted toward the goals as follows:
- (1) If the supplies, materials, or equipment are obtained from an MBE/WBE that is a Manufacturer or Regular Dealer, 100 percent of the payment for the supplies, materials, or equipment shall be counted toward the goals.
  - (2) If the supplies, materials, or equipment are obtained from an MBE/WBE that is neither a Manufacturer nor a Regular Dealer, the cost of the materials and supplies themselves shall not be counted toward the goals. However, fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, may be counted toward the goals if the payment of such fees is a customary industry practice and such fees are reasonable and not excessive as compared with fees customarily allowed for similar services.
- (C) When an MBE/WBE subcontractor listed on the MBE/WBE Compliance Plan subcontracts part of the work of its contract to another Firm, the value of that second-level subcontracted work may not be counted toward the goals based on the initial subcontractor's MBE/WBE certification. Please see Section VI for an explanation of how to count the value of second-level subcontractors' work.
- (D) A Firm owned by a minority woman may be certified as both an MBE and a WBE (dual certified). On a single contract, the value of the work performed by a dual certified subcontractor may not be counted toward both the MBE and the WBE goals. The Proposer must decide whether to designate the dual certified subcontractor as an MBE or a WBE in the MBE/WBE Compliance Plan for the purpose of meeting the goals set for that contract. That designation may not be changed for the duration of the contract.
- (E) When an MBE/WBE performs as a participant in a certified Joint Venture, only the portion of the contract value that is the result of the distinct, clearly defined portion of the work that the MBE/WBE performs with its own forces and for which it is at risk shall be counted towards the project goals. For more specific information regarding requirements and evaluations of certified MBE/WBE Joint Ventures, please see the City's MBE/WBE Procurement Program Rules or contact SMBR's Certification Division.
- (F) Only expenditures to an MBE/WBE contractor that is performing a Commercially Useful Function shall be counted toward the project goals. If SMBR makes an initial determination that an MBE/WBE is not

performing a Commercially Useful Function given the type of work involved and normal industry practices, the MBE/WBE may present evidence to rebut this presumption.

(G) To be counted toward project goals, MBE/WBEs must be certified by SMBR prior to the due date to submit the MBE/WBE Compliance Plan as specified in the City’s solicitation documents. A Firm that is certified as an MBE/WBE at the time that the MBE/WBE Compliance Plan is filed may cease to be a certified Firm before the contract is completed. Only the value of the work performed by such a Firm while it is certified may be counted toward the project goals.

## **Section V Disclosure of Non-Certified Subcontractors**

Please list all known non-certified subcontractors, using the legal name under which they are registered to do business with the City of Austin, to be used in the performance of this contract. If Proposer will not use any non-certified Firms, please write “N/A” in the first box on this page.

The scopes of work indicated in Section V will be considered subcontracting opportunities for MBEs and WBEs, unless it is demonstrated that certified MBEs or WBEs are unavailable or do not possess the requirements in the technical portion of the solicitation to perform the work involved. If Proposer did not meet the project goals, Proposer must explain in the space provided why MBEs/WBEs were not used as subcontractors and **submit documentation for the stated reason if applicable**. If Proposer did meet the project goals, please indicate “Goals Met” in the space provided.

## **Section VI Disclosure of Second-Level Subcontractors**

Please complete this section if Proposer knows that one or more of Proposer’s subcontractors will subcontract part of the work of their contracts to second-level subcontractors. In the last line of each entry box, please write the name of the first-level subcontractor that will be subcontracting work to the second-level subcontractor. Identify second-level subcontractors by the legal name under which they will be registered to do business with the City. The first-level subcontractor should be listed in Section IV or Section V. If Proposer is not aware of any second-level subcontractors, please write “N/A” in the first box on this page.

As discussed in Section IV above, when an MBE/WBE subcontractor subcontracts part of the work of its contract to another Firm, the value of that second-level subcontractor work may not be counted toward the goals based on the initial subcontractor’s MBE/WBE certification. The value of the second-level subcontractor work may be counted toward the project goals only based on the second-level subcontractor’s own MBE/WBE certification, if any. Work that an MBE/WBE subcontracts to a non-certified firm does not count toward the goals. Work that an MBE/WBE subcontractor contracts to another certified firm shall not be counted twice towards the goal.

## **Section VII Disclosure of Primary and Alternate Trucking Subcontractors**

Please complete this section if the project includes trucking or hauling services as a scope of work. Each time this scope of work is required on the project, Proposer must contact the Firm listed as the primary trucking subcontractor in this section. If the primary trucking subcontractor is not available or cannot perform the entirety of the work at the time required, Proposer may contact the alternate trucking subcontractors in the order that Proposer lists them in this section. Identify primary and alternate trucking subcontractors by the legal name under which they will be registered to do business with the City. Bidder must contact the primary trucking subcontractor at least 24 hours before the work is to be performed. Proposers will not need to submit a Request for Change to use the alternate trucking subcontractors if Proposer contacted the primary trucking subcontractor first and then proceeded to contact the alternates in the order Proposer listed them on this section.

## **Section VIII MBE/WBE Compliance Plan Checklist**

Please complete the *MBE/WBE Compliance Plan Checklist* with the information requested if the stated project goal(s) are not met.

## **GOOD FAITH EFFORTS INSTRUCTIONS**

The Proposer has a responsibility to make a portion of the work available to MBE/WBE subcontractors so as to facilitate meeting the goals or subgoals. If the Proposer cannot achieve the goals or subgoals, documentation of the Proposer's Good Faith Efforts to achieve the goals or subgoals must be submitted at the same time as the MBE/WBE Compliance Plan. The SMBR Director will review the documentation provided and determine if the Proposer made sufficient Good Faith Efforts. That there may be some additional costs involved in soliciting and using MBEs and WBEs is not a sufficient reason for a Proposer's failure to meet the goals and subgoals, as long as such costs are reasonable. However, a Proposer is not required to accept a higher quote from a subcontractor in order to meet a goal or subgoal.

### **Contacting Potential MBE/WBE Subcontractors**

The City has determined the scopes of work for this project and provided an Availability List of all the MBE and WBE firms certified to perform those scopes. The *Availability List* is included with the solicitation documents and has two sections: *Vendors Within the Significant Local Business Presence (SLBP) Area* and *Vendors Outside the Significant Local Business Presence (SLBP) Area*. As part of Good Faith Efforts, Proposers **must** contact **all** firms listed in the *Vendors Within the SLBP Area* section. Please note that every firm on the Availability List – outside the SLBP - is City-certified as an MBE or WBE for purposes of meeting the project goals, and Proposers are encouraged to contact all the firms. If a Proposer identifies an additional scope of work for this project not identified in the solicitation, the Proposer must request from SMBR an Availability List for that scope of work and contact all firms, if any, on such list. The SMBR Director determines whether the Proposer has made sufficient Good Faith Efforts if goals or subgoals are not met.

**The City neither warrants the capacity or availability of any Firm, nor does the City guarantee the performance of any Firm indicated on the availability list.**

The availability list is sorted in numerical sequence by National Institute of Governmental Purchasing (NIGP) Commodity Code. It includes all certified MBE/WBE vendors for the scopes of work identified by the City as being potentially applicable to this project. However, the availability list is not a comprehensive identification of all areas of potential subcontracting opportunities. If a Proposer identifies one or more work areas that are appropriate subcontracting opportunities that not included on the availability list, the Proposer shall contact SMBR to request the availability list for MBE and WBE Firms in those areas. Requests for supplemental availability lists will be evaluated as a part of the Proposer's Good Faith Efforts to meet the goals.

If the Proposer believes any of the work areas on the availability list are not applicable to the project's scope of work or if the Proposer believes that the lists are inaccurate, the Proposer shall notify the authorized contact person of the concern immediately and prior to submission of the response to the solicitation. All Proposers will be notified in writing of any inaccuracy by addendum to the solicitation. Concerns about a particular MBEs/WBE's certification status may be addressed to SMBR at [SMBRComplianceDocuments@austintexas.gov](mailto:SMBRComplianceDocuments@austintexas.gov). If the Proposer wants to use a certified subcontractor that does not appear on this list, Proposer may request from SMBR or visit [https://www.austintexas.gov/financeonline/account\\_services/account/login.cfm](https://www.austintexas.gov/financeonline/account_services/account/login.cfm) certification and the specific work areas for which the subcontractor has been certified.

Appendix B provides a sample format for collecting required information from the subcontractors on the *Availability List*. The information must be obtained at least seven (7) business days prior to the submission of the *MBE/WBE Compliance Plan*; alternate formats may be acceptable as long as they gather the same required information. Included with the solicitation documents is an alphabetized list containing the names and addresses of the MBE/WBE Firms listed on the availability list included with the solicitation. This list is in label format and is designed to facilitate the printing of mailing labels.

The following codes are used on the availability lists:

F	Female	M	Male
AA/B	African American	H	Hispanic
A/NA	Asian/Native American	W/C	Caucasian
LOC	A firm's two-digit location code (e.g., SL or TX)	AU	Austin
SL	Significant Local Business Presence (SLBP)	TX	Outside SLBP
MBE	A firm certified as a Minority-owned Business Enterprise	WBE	A firm certified as a Woman-owned Business Enterprise
MWB	A firm certified as both a Minority-owned & Woman-owned Business Enterprise	WMB	A firm certified as both a Woman-owned & Minority-owned Business Enterprise
MWDB	A firm certified as a Minority-owned, Woman-owned, and Disadvantaged Business Enterprise	WMDB	A firm certified as a Woman-owned, Minority-owned, and Disadvantaged Business Enterprise

### Good Faith Efforts Review

If goals are not met, SMBR will examine the *MBE/WBE Compliance Plan* and the Good Faith Efforts documentation submitted with the *MBE/WBE Compliance Plan* to ensure that the Proposer made Good Faith Efforts to meet the project goals or subgoals. In determining whether the Proposer has made Good Faith Efforts, SMBR will consider, at a minimum, the Proposer's efforts to do the following:

- (A) Solicit certified MBE/WBE subcontractors with a Significant Local Business Presence (SLBP) and request a response from those interested subcontractors who believe they have the capability to perform the work of the contract through at least two reasonable, available, and verifiable means. The Proposer must solicit this interest more than seven (7) business days prior to submission of the *MBE/WBE Compliance Plan* to allow sufficient time for the MBEs or WBEs to respond. (The date bids/proposals are due to the City should not be included in the seven day solicitation criteria). The Proposer must state a specific and verifiable reason for not contacting each certified Firm with a significant local business presence.
- (B) Provide interested MBEs/WBEs with adequate information about the plans, specifications, and requirements of the contract, including addenda, in a timely manner, to assist them in responding and submitting a proposal.
- (C) Negotiate in good faith with interested MBEs/WBEs that have submitted bids/proposals to the Proposer. An MBE/WBE that has submitted a bid to a Proposer but has not been contacted within five (5) business days of submission of the bid may contact SMBR to request a meeting with the Proposer. Evidence of good faith negotiation includes the names, addresses, and telephone numbers of MBEs/WBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for MBEs/WBEs to perform the work. Bid shopping is prohibited.
- (D) Select portions of the work to be performed by MBEs/WBEs in order to increase the likelihood that the MBE/WBE goals or subgoals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE/WBE participation, even when the Proposer might otherwise prefer to perform these work items with its own forces.

- (E) Publish solicitation notice in a local publication (i.e. newspaper, trade association publication, or via electronic/social media).
- (F) Use the services of available community organizations; minority persons/women consultants' or groups in the applicable field for the type of work described in this solicitation; local, state, and federal minority persons/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of MBEs/WBEs.
- (G) Seek guidance from SMBR on any questions regarding compliance with this section.

The following factors may also be considered by SMBR in determining compliance through good faith efforts; however, they are not intended to be a mandatory checklist, nor are they intended to be exclusive or exhaustive:

- (A) Whether the Proposer made efforts to assist interested MBEs/WBEs in obtaining bonding, lines of credit, or insurance as required by the City or consultant.
- (B) Whether the Proposer made efforts to assist interested MBEs/WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

In assessing minimum good faith efforts, SMBR may consider whether the Proposer sought assistance from SMBR on any questions related to compliance with this section. In addition, SMBR may also consider the performance of other Proposers successfully meeting the goals.

The ability or desire of a Proposer to perform the work of a contract with its own organization does not relieve the Proposer of the responsibility to make Good Faith Efforts.

Proposers may reject MBE/WBEs as unqualified only following thorough investigation of their capabilities. The MBE/WBE's membership or lack of membership in specific groups, organizations, or associations, and political or social affiliations (for example union or non-union employee status), are not legitimate causes for the rejection or non-solicitation of bids/proposals in the Proposer's efforts to meet the project goals or subgoals.

**At a minimum, the following should be submitted to support Good Faith Effort documentation (documentation is not limited to this list):**

- Fax logs, emails, and/or copies of documents sent to firms within the SLBP area
- Copies of written correspondence to certified firms (include names, addresses, and other identifying information)
- Phone logs with responses (*Phone contacts, alone, will not be sufficient.*)
- Lists and copies of letters sent by mail, hand delivered, or e-mailed
- Breakdown of negotiations made with certified firms
- Copies of advertisements with local newspapers, trade associations, Chambers of Commerce and/or any other public media
- Other communications regarding contacts with trade associations and Chambers of Commerce

**The following additional Good Faith Efforts factors may also be considered:**

- Copies of emails or phone logs regarding assistance in bonding, lines of credit, or insurance (as required by City or Consultant)
- Copies of emails or phone logs regarding assistance in obtaining equipment, supplies, materials, or services
- Copies of all proposals received in response to Proposer contacting other Firms

## POST-AWARD INSTRUCTIONS

### **Confirmation Letters (See Appendix C)**

All Proposers are required to include copies of the confirmation letters received from subcontractors, confirming the Subcontractors' willingness to provide services should the contract be awarded.

Changes to the *MBE/WBE Compliance Plan* including additions, deletions, contract changes, or substitutions of subcontractors are permitted only after contract execution and only with prior written approval of SMBR. Request for changes to the *MBE/WBE Compliance Plan* must be submitted on the Request for Change of *MBE/WBE Compliance Plan* Form for all levels of subcontracting and must be approved by the SMBR Director prior to adding, deleting, changing or substituting any subcontractor.

### **Post-Award Monitoring**

The City will monitor post-award compliance information regarding the use of certified MBE/WBE Firm(s) listed on the *MBE/WBE Compliance Plan*. The Proposer will be required to submit post award reports detailing the utilization of all subcontractors. The reports and other information regarding post-award compliance will be discussed with the successful Proposer. The following information on Payment Verification, Change Order/Contract Amendments, and Progressive Sanctions provides an overview of some of the post-award monitoring process.

#### **▪ Payment Verification**

Proposers are advised that the contract resulting from this solicitation includes a subcontractor payments clause. This clause requires all subcontractors to be paid within ten (10) calendar days from the date that the Proposer has been paid by the City for invoices submitted by subcontractors.

The Proposer shall submit a *Subcontractor/Supplier Awards and Expenditures Report* to the project manager and/or contract administrator at the time specified by the managing department. The report shall be in the format required by the City and shall include all awards and payments to subcontractors for goods and services provided under the contract during the previous month. This report may be used by the City to verify utilization of and payment to MBEs and WBEs.

The Proposer and/or any subcontractor whose subcontracts are being counted toward the MBE/WBE requirements shall allow the City access to records relating to the contract, including but not limited to, subcontracts, payroll records, tax information, and accounting records, for the purpose of determining whether the MBEs/WBEs are performing the scheduled subcontract work.

In determining achievement of MBE/WBE goals, the participation of an MBE/WBE subcontractor shall not be counted until the amount being counted toward the goal has been paid.

#### **▪ Change Order/Contract Amendments**

The goals on this contract shall also apply to change orders that require work beyond the scope(s) of trades originally required to accomplish the project. The Proposer is required to make Good Faith Efforts to obtain MBE/WBE participation for additional scopes of work.

Change orders that do not alter the type of trades originally required to accomplish the project may be undertaken

using the subcontractors already under contract to the Proposer. Project managers will have automatic SMBR approval to authorize any change order that **increases** the contract amount for an **existing** certified subcontractor and is **within** the existing scope being performed by that subcontractor.

▪ **Progressive Sanctions**

The successful Proposer's MBE/WBE Compliance Plan will be incorporated into the resulting contract with the City and shall be considered part of the consultant's performance requirements. Progressive sanctions may be imposed for failure to comply with Chapter 2-9C of the City Code, including:

- Providing false or misleading information in Good Faith Efforts documentation, post award compliance, or other Program operations;
- Substituting Subcontractors without first receiving approval for such substitutions, which may include the addition of an unapproved Subcontractor and failure to use a Subcontractor listed in the approved MBE/WBE Compliance Plan ; and
- Failure to comply with the approved MBE/WBE Compliance Plan without an approved Request for Change, an approved Change Order, or other approved change to the Contract.

Please refer to Section 2-9C-25 of the City Code and SMBR Rule 11.5 for additional information.

**MBE/WBE COMPLIANCE PLAN**

*All applicable sections must be completed and submitted by the due date and time as indicated in the solicitation documents.*

The Proposer by submitting and signing this solicitation’s 0300 form, understand and agree that the MBE/WBE Compliance Plan submitted as a part of the bid/proposal shall become a part of the contract with the City of Austin. The Proposer further understand that the City of Austin’s Minority-owned and Women-owned Business Enterprise Procurement Program Ordinance and the Small and Minority Business Resources Department (SMBR) Rules shall apply.

**Section I — Project Identification and Goals**

<b>Project Name</b>	Distribution Line Clearance, Street and Nightwatchman Lights
<b>Solicitation Number</b>	RFP 1100 EAL3011REBID

Project Goals or Subgoals		
Combined MBE/WBE	4.33	%
MBE		%
African American		%
Hispanic		%
Asian/Native American		%
WBE		%

**Section II — Proposer Company Information**

Company Name	
Address	
City, State Zip	
Phone	
Fax	E-Mail
Name of Contact Person	
Is your company registered on Vendor Connection?	Yes <input type="checkbox"/> <i>If yes, provide Vendor Code _____</i> No <input type="checkbox"/> <i>All Contractors and subcontractors must register with the City of Austin’s Vendor connect prior to award. See link for registration information at <a href="http://www.austintexas.gov/financeonline/finance/index.cfm">http://www.austintexas.gov/financeonline/finance/index.cfm</a></i>
Is your company City of Austin MBE/WBE certified?	Yes <input type="checkbox"/> No <input type="checkbox"/> <i>(If yes, please indicate type below)</i> 1. MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE <input type="checkbox"/> Joint Venture <input type="checkbox"/> 2. AA <input type="checkbox"/> H <input type="checkbox"/> A/N <input type="checkbox"/> WBE <input type="checkbox"/>

**City of Austin SMBR Use Only**

*I have reviewed this Compliance Plan and found that the Bidder **HAS**  **HASNOT**  complied as per the City Code Chapter 2-9A through GFE.*

Reviewing Counselor \_\_\_\_\_ Date \_\_\_\_\_

*I have reviewed this Compliance Plan and have found the Bidder **COMPLIANT**  **NON-COMPLIANT***

Director / Assistant Director \_\_\_\_\_ Date \_\_\_\_\_

**Section III — MBE/WBE STATEMENT OF RESPONSIBILITY**

**STATEMENT OF RESPONSIBILITY**

*Initial one of the following Statement of Responsibility options below as applicable.*

**A. Goals Met**

\_\_\_\_\_ I understand I am responding to a Request for Proposal - Requirement Based solicitation. I understand and affirm I have filled out this Compliance Plan in accordance with applicable City Code and Program Rule requirements, and must comply with the MBE/WBE Program in order to be considered for selection of this solicitation. If chosen for this Solicitation, compliance with the City’s MBE/WBE Procurement Program ordinances and rules is required. If additional scopes of work or subcontracting opportunities are identified, I agree to contact SMBR for an availability list at [snbrcompliancedocuments@austintexas.gov](mailto:snbrcompliancedocuments@austintexas.gov) and perform good faith efforts if a non-certified firm is selected. I agree to meet the solicitation goals specified in the chart below utilizing the firms listed on the Compliance Plan as scopes of work are assigned.

<b>Proposed Participation</b>	
Combined MBE/WBE	%
MBE	%
African American	%
Hispanic	%
Asian/Native American	%
WBE	%

**B. Good Faith Efforts**

\_\_\_\_\_ I understand that I am responding to a Request for Proposal - Requirement Based solicitation. I do not anticipate meeting the goals with certified MBE/WBE firms; therefore I am submitting Good Faith Efforts documentation demonstrating my efforts to meet the established MBE/WBE goals. I understand and affirm I have filled out this Compliance Plan in accordance with applicable City Code and Program Rule requirements, and must comply with the MBE/WBE Program in order to be considered for selection for this solicitation. If additional scopes of work or subcontracting opportunities are identified, I agree to contact SMBR for an availability list at [snbrcompliancedocuments@austintexas.gov](mailto:snbrcompliancedocuments@austintexas.gov) and perform good faith efforts if a non-certified firm is selected.

**This signed Statement of Responsibility is my commitment to the requirements of the MBE/WBE Procurement Program which will become a part of my contract with the City of Austin, if selected.**

\_\_\_\_\_  
**Name and Title of Authorized Representative (Print or Type)**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

**Section IV — Disclosure of MBE and WBE Subcontractors**  
(Duplicate as Needed)

Note:

- Fill in all the blanks (use “none” or “N/A” where appropriate).
- MBE/WBE Compliance Plans not complying with these requirements shall be rejected as non-responsive.
- Fill in names of MBE/WBE certified Firms as registered with City of Austin Vendor Connection.
- Select either MBE or WBE for dually certified firms to indicate which certification will count towards the MBE or WBE goal.
- Contact SMBR to request an availability list of certified Firms for additional scopes of work that were not included on the original availability list.

<b>Name of MBE/WBE Certified Firm</b>	
City of Austin Certification Data	<input type="checkbox"/> MBE <input type="checkbox"/> WBE    Gender/ Ethnicity:
Vendor Code	
Address/ City / State / Zip	
Contact Person & Phone #	
Fax & Email Address	
Commodity Codes	
Commodity Codes Descriptions	

<b>Name of MBE/WBE Certified Firm</b>	
City of Austin Certification Data	<input type="checkbox"/> MBE <input type="checkbox"/> WBE    Gender/ Ethnicity:
Vendor Code	
Address/ City / State / Zip	
Contact Person & Phone #	
Fax & Email Address	
Commodity Codes	
Commodity Codes Descriptions	

<b>Name of MBE/WBE Certified Firm</b>	
City of Austin Certification Data	<input type="checkbox"/> MBE <input type="checkbox"/> WBE    Gender/ Ethnicity:
Vendor Code	
Address/ City / State / Zip	
Contact Person & Phone #	
Fax & Email Address	
Commodity Codes	
Commodity Codes Descriptions	

<b>Name of MBE/WBE Certified Firm</b>	
City of Austin Certification Data	<input type="checkbox"/> MBE <input type="checkbox"/> WBE    Gender/ Ethnicity:
Vendor Code	
Address/ City / State / Zip	
Contact Person & Phone #	
Fax & Email Address	
Commodity Codes	
Commodity Codes Descriptions	

**Section V — Disclosure of Non-Certified Subcontractors**  
(Duplicate as Needed)

Note:

- Fill in all the blanks (use “none” or “N/A” where appropriate).
- MBE/WBE Compliance Plans not complying with these requirements shall be rejected as non-responsive.
- Fill in names of Non-Certified Subcontractors as registered with the City of Austin.

**Are Goals Met?**      Yes  No  **If no, state reason(s) below and attach documentation:**

<b>Name of Non-Certified Subcontractor</b>	
Vendor Code	
Address/ City / State / Zip	
Contact Person & Phone #	
Fax & Email Address	
Commodity Codes	
Commodity Codes Descriptions	
Reason Certified Firm not used	
<b>Name of Non-Certified Subcontractor</b>	
Vendor Code	
Address/ City / State / Zip	
Contact Person & Phone #	
Fax & Email Address	
Commodity Codes	
Commodity Codes Descriptions	
Reason Certified Firm not used	
<b>Name of Non-Certified Subcontractor</b>	
Vendor Code	
Address/ City / State / Zip	
Contact Person & Phone #	
Fax & Email Address	
Commodity Codes	
Commodity Codes Descriptions	
First-Level Subcontractor	
Reason Certified Firm not used	
<b>Name of Non-Certified Subcontractor</b>	
Vendor Code	
Address/ City / State / Zip	
Contact Person & Phone #	
Fax & Email Address	
Commodity Codes	
Commodity Codes Descriptions	
First-Level Subcontractor	
Reason Certified Firm not used	

**Section VI – Disclosure of Second-Level Subcontractors**  
(Duplicate as Needed)

Note:

- Fill in all the blanks (use “none” or “N/A” where appropriate).
- MBE/WBE Compliance Plans not complying with these requirements shall be rejected as non-responsive.
- Fill in names of Second-Level Subcontractors as registered with the City of Austin.

<b>Name of Second-Level Subcontractor</b>	
City of Austin Certified? (choose one)	<input type="checkbox"/> No <input type="checkbox"/> MBE <input type="checkbox"/> WBE    Gender/ Ethnicity:
Vendor Code	
Address/ City / State / Zip	
Contact Person & Phone No.	Phone #:
Email Address	
Commodity Codes	
Commodity Codes Descriptions	
Name of First-Level Subcontractor	
<b>Name of Second-Level Subcontractor</b>	
City of Austin Certified? (choose one)	<input type="checkbox"/> No <input type="checkbox"/> MBE <input type="checkbox"/> WBE    Gender/ Ethnicity:
Vendor Code	
Address/ City / State / Zip	
Contact Person & Phone No.	Phone #:
Email Address	
Commodity Codes	
Commodity Codes Descriptions	
Name of First-Level Subcontractor	
<b>Name of Second-Level Subcontractor</b>	
City of Austin Certified? (choose one)	<input type="checkbox"/> No <input type="checkbox"/> MBE <input type="checkbox"/> WBE    Gender/ Ethnicity:
Vendor Code	
Address/ City / State / Zip	
Contact Person & Phone No.	Phone #:
Email Address	
Commodity Codes	
Commodity Codes Descriptions	
Name of First-Level Subcontractor	
<b>Name of Second-Level Subcontractor</b>	
City of Austin Certified? (choose one)	<input type="checkbox"/> No <input type="checkbox"/> MBE <input type="checkbox"/> WBE    Gender/ Ethnicity:
Vendor Code	
Address/ City / State / Zip	
Contact Person & Phone No.	Phone #:
Email Address	
Commodity Codes	
Commodity Codes Descriptions	
Name of First-Level Subcontractor	

**A Section VII – Disclosure of Primary and Alternate Trucking Subcontractors**  
(Duplicate as Needed)

Note:

- Fill in all the blanks (use “none” or “N/A” where appropriate).
- MBE/WBE Compliance Plans not complying with these requirements shall be rejected as non-responsive.
- Fill in names of Primary and Alternate Trucking Subcontractors as registered with the City of Austin.

<b>Primary Trucking Subcontractor</b>	
City of Austin Certified? (choose one)	<input type="checkbox"/> No <input type="checkbox"/> MBE <input type="checkbox"/> WBE    Gender/ Ethnicity:
Vendor Code	
Address/ City / State / Zip	
Contact Person & Phone No.	Phone #:
Commodity Codes	
Commodity Codes Descriptions	

<b>Alternate Trucking Subcontractor</b>	
City of Austin Certified? (choose one)	<input type="checkbox"/> No <input type="checkbox"/> MBE <input type="checkbox"/> WBE    Gender/ Ethnicity:
Vendor Code	
Address/ City / State / Zip	
Contact Person & Phone No.	Phone #:
Commodity Codes	
Commodity Codes Descriptions	

<b>Alternate Trucking Subcontractor</b>	
City of Austin Certified? (choose one)	<input type="checkbox"/> No <input type="checkbox"/> MBE <input type="checkbox"/> WBE    Gender/ Ethnicity:
Vendor Code	
Address/ City / State / Zip	
Contact Person & Phone No.	Phone #:
Commodity Codes	
Commodity Codes Descriptions	

<b>Alternate Trucking Subcontractor</b>	
City of Austin Certified? (choose one)	<input type="checkbox"/> No <input type="checkbox"/> MBE <input type="checkbox"/> WBE    Gender/ Ethnicity:
Vendor Code	
Address/ City / State / Zip	
Contact Person & Phone No.	Phone #:
Commodity Codes	
Commodity Codes Descriptions	

<b>Alternate Trucking Subcontractor</b>	
City of Austin Certified? (choose one)	<input type="checkbox"/> No <input type="checkbox"/> MBE <input type="checkbox"/> WBE    Gender/ Ethnicity:
Vendor Code	
Address/ City / State / Zip	
Contact Person & Phone No.	Phone #:
Commodity Codes	
Commodity Codes Descriptions	

**Section VIII — MBE/WBE Compliance Plan Check List**

**Is the stated project goal of the solicitation met?**

Yes  No

*(If no, complete and submit Section VII Compliance Plan Check List)*

If the goals or subgoals were not achieved, all questions in Section VII **must** be completed and **Good Faith Efforts documentation must be submitted with the MBE/WBE Compliance Plan.** The completion and submission of this form is not required if the above question is answered *Yes*.

Is the following documentation attached to support good faith effort requirements to achieve goals or subgoals?		
<ul style="list-style-type: none"> <li>• Copy of written solicitation sent to MBE/WBEs in SLBP area 7 business days prior to the submission of this Compliance Plan</li> </ul>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<ul style="list-style-type: none"> <li>• Two separate methods of notices sent to MBE/WBEs in SLBP area Indicate notice types: fax transmittals    emails    phone log    letters</li> </ul>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<ul style="list-style-type: none"> <li>• Copy of advertisements placed in local publication</li> </ul>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<ul style="list-style-type: none"> <li>• Copy of notices sent to Minority and Women organizations</li> </ul>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<ul style="list-style-type: none"> <li>• Documentation that demonstrates additional GFEs:                             <ul style="list-style-type: none"> <li>○ Efforts to assist interested MBEs/WBEs in obtaining bonding, lines of credit, or insurance as required by the City or contractor</li> <li>○ Efforts to assist interested MBEs/WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services</li> <li>○ Efforts made to reach agreements with the MBE/WBEs who responded to Bidder’s written notice</li> </ul> </li> </ul>	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Were additional elements of work identified to achieve the goals or subgoals? Yes  No   
 If yes, please explain: \_\_\_\_\_

Was SMBR contacted for assistance? Yes  No   
 If yes, complete the following:  
 Contact Person: \_\_\_\_\_  
 Date of Contact: \_\_\_\_\_  
 Summary of Request: \_\_\_\_\_

Were Minority or Women organizations contacted for additional assistance? Yes  No   
 If yes, complete the following:  
 Organization(s): \_\_\_\_\_  
 Date of Contact: \_\_\_\_\_  
 Summary of Request: \_\_\_\_\_

**LETTER TO POTENTIAL SUBCONTRACTORS**

\_\_\_\_\_ is soliciting Minority and Women-Owned Business Enterprise participation for the following City of Austin project. Solicitation documents are available at our office or at One Texas Center, 505 Barton Springs Road, 10<sup>th</sup> Floor, Suite 1045.

Name of Project: \_\_\_\_\_

Project/Solicitation Number: \_\_\_\_\_

Location of Pre-Proposal Conference (if any): \_\_\_\_\_

Response Due Date and Time: \_\_\_\_\_

**This Project Includes the Following Scopes of Work:**


Contact our office for detailed information on the scopes of services to be subcontracted and the relevant terms and conditions of the contract.

Please contact: \_\_\_\_\_ at \_\_\_\_\_ or \_\_\_\_\_  
(Name) (Telephone) (Fax)

All Responses MUST be received by: \_\_\_\_\_

**CONFIRMATION LETTER**

*(Printed on Subcontractor Letterhead)*

Contact Name  
Business Name  
Street Address  
City, State Zip

Re: Solicitation # \_\_\_\_\_

Dear (Contact Name):

This letter is to confirm that (insert Subcontractor name here) is pleased to provide (insert Prime Contractor name here) (insert service here) for the above-referenced project. This confirmation letter is for a Requirement Based contract solicitation. I understand that the scope(s) of work in the described solicitation is based on work assignments from the City and may or may not result in actual work to my firm.

We look forward to working with you and the City of Austin should your team be awarded the project.

Sincerely,

(insert signature)

Contact Name  
Title  
Business Name

# City of Austin Subcontract Vendor List - VCRCVS

Solicitation No.: RFP 1100 EAL3011REBID Distribution Line Clearance, Street and Nightwatchman Lights

Version No.: 1

Phase: 1

C Code & Description	Vend Code/Adr	Contact Information	W/M/B Code	G/E	LCTN
<b>Vendors Within the SLBP Area</b>					
<b>67590 Weed Killers (Herbicides), Liquid</b>					
	VS0000000829 Patricia K White 9901 Brodie Ln. Ste 160-284 Austin Tx 78748	Patricia White MSsupply@austin.rr.com 512-280-8911 Fax: 866-260-4265	WDB	F/Caucasian	AU
<b>96239 Hauling Services</b>					
	V00000913175 A. Garcia Trucking Inc 1000 Dacy Lane Kyle Tx 78640	Jorge Armando Garcia jaroadboring@yahoo.com 5125529301 Fax: 5122680974	MB	F/Hispanic	SL
	VS0000021971 ANTONIO RAMOS LIZARDO 11105 Pearce Ln Del Valle Tx 78617	antonio ramos lizardotrucking@hotmail.com 512-779-2632 Fax: 512-385-7301	MB	M/Hispanic	AU
	V00000931566 Alberto R Guerra 1302-A Highway 71 W Bastrop Tx 78602	Alberto R Guerra albertoguerra@riograndecargo.com 9565926522 Fax: 8777204070	MB	M/Hispanic	SL
	VC0000101882 BARBARA WHITE 9701 Wayside Blvd Austin Tx 78724	BARBARA WHITE bwbmwtrucking@gmail.com 512-626-7642 Fax: 512-933-9699	MWB	F/African American	AU
	RAN8308638 BONIFACIO REYES RANGEL 2108 E 16th St Austin Tx 78702	BONIFACIO RANGEL mr.rangel@sbcglobal.net 512-276-0038 Fax: 512-469-0597	MDB	M/Hispanic	AU
	V00000915488 BRIDGET C THOMAS 1514 Ed Bluestein Ste 101 Austin Tx 78721	BRIDGET C THOMAS bubblez.suddz.carwash@gmail.com 512-382-9285	MWDB	F/African American	AU
	CGA8319026 CGT AUS INC 12730 Laws Rd Buda Tx 78610-9695	CARLOS GARCIA texasboring@yahoo.com 512-801-8945 Fax: 512-243-3571	MDB	M/Hispanic	SL
	VC0000102282 CMS 2 TRUCKING INC Po Box 141423 Austin Tx 78714-1423	SQUIRE ELLIOTT LHAULER@YAHOO.COM 512-431-1351	MDB	M/African American	AU
	VC0000103459 COMANCHE XPRESS LLC Po Box 144402 Austin Tx 78714	TROY JOHNSON COMANCHEXPRESS@AUSTIN.RR.COM 512-771-2692 Fax: 512-904-0022	MDB	M/African American	AU

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C Code & Description	Vend Code/Adr	Contact Information	W/MB Code	G/E	LCTN
	V00000911561 Cantu Construction Inc 14806 Eilers Rd Austin Tx 78719	Thomas Cantu cantu-construction-inc@hotmail.com 512-844-5545 Fax: 5122439650	MDB	M/Hispanic	AU
	V00000963608 Cave Trucking, LLC Po Box 526 Pflugerville Tx 78615	Oliver Cueva oliver@cavetrucking.com 5123549084	MDB	M/Hispanic	SL
	V00000911499 Cynthia Cueva-Luna Po Box 180233 Austin Tx 78718	Cynthia Cueva-Luna alphaatx@gmail.com 512-769-0752 Fax: 8883554419	MWDB	F/Hispanic	AU
	V00000906584 DAVID DELA CERDA 2302 Southwood Hills Dr Taylor Tx 76574	david dela cerda dlc.laguna@yahoo.com 512-496-0864 1 Fax: 5123651231	MDB	M/Hispanic	SL
	V00000955913 Dawn Smith 11516 Sunny Creek Ln Manor Tx 78653	Dawn Smith yellagirl1255@yahoo.com 5127624310 624310	MWDB	F/African American	AU
	V00000935995 Felis Balderas Sr. 6803 Viewing Place Austin Tx 78719	Felis Balderas f.balderasfamily@hotmail.com 5124481420 Fax: 5124481420	MB	M/Hispanic	AU
	V00000946009 Fernandez Trucking 12221 Hulsey Rd Unit 2 Manor Tx 78653	Delia G Fernandez fernandeztruckingtx@gmail.com 9566506949	MB	M/Hispanic	AU
	V00000939918 Fuego Transportation LLC 1912 Dry Season Trl. Austin Tx 78754	Fidel Fuentes fidelfu_1970@hotmail.com 5125635381 Fax: 5128329379	MB	M/Hispanic	AU
	VC0000102940 GARCIA J CONTRACTORS INC Po Box 1649 Buda Tx 78610	JUAN GARCIA garciajcontractors@gmail.com 512-965-4274 Fax: 8884181023	MDB	M/Hispanic	SL
	V00000960403 IVY'S TRUCKING CORP 127 Elm Grove Ct Dale Tx 78616	IVY ROSALVA CRUZ ivystrucking92@yahoo.com 5125776199	MWDB	F/Hispanic	SL
	JAR8315720 J A ROAD BORING 1000 Dacy Ln Kyle Tx 78640-5143	ARMANDO GARCIA jaroadboring@yahoo.com 512-268-4312 Fax: 512-268-0974	MB	M/Hispanic	SL

## City of Austin Subcontract Vendor List - VCRCVS

Solicitation No.: RFP 1100 EAL3011REBID Distribution Line Clearance, Street and Nightwatchman Lights

Version No.: 1

Phase: 1

C Code & Description	Vend Code/Adr	Contact Information	W/M/B Code	G/E	LCTN
	JAG8307217 JAG TRUCKING INC 800 Private Rd 917 Georgetown Tx 78626	GILLY QUIROZ GILLY@JAGTRUCKING.COM 512-864-9906 Fax: 512-864-3121	MDB	M/Hispanic	SL
	V00000947205 JC TORRES LLC 2419 Hallie Lane Round Rock Tx 78664	Norma Alicia vazquez de Torres norma.vazquez@ni.com 5129255121	MB	F/Hispanic	SL
	VS0000027653 JUAN DEANDA TRUCKING LLC 5101 Hwy 21 Maxwell Tx 78656	JUAN DEANDA juandeandatruckingllc@yahoo.com 512-748-1537 Fax: 5122856596	MDB	M/Hispanic	LO
	JOH2629800 Johnson Hauling, LLC 1805 Elmira Austin Tx 78721	ULYSSES JOHNSON johnsonhauling@hpeprint.com 512-928-1060 Fax: 512-926-4180	MB	M/African American	AU
	V00000937626 L Contractors, LLC 5415 Mckinney Falls Pkwy Austin Tx 78744	Colby Leoni lcontractorsllc@gmail.com 8108692543 Fax: 7372108854	WDB	F/Caucasian	AU
	LIL7079660 LILLIE'S TRUCKING INC 1110 Radam Cir Austin Tx 78745-3018	LILLIE POLSTON email@notprovided.xxx 512-444-9562	WB	F/Caucasian	AU
	FLO7135160 LORRAINE FLORES 952 Skyline Rd Dale Tx 78616-2442	LORRAINE FLORES 512-844-6461 Fax: 512-243-1851	MWDB	F/Hispanic	SL
	V00000925782 Lewis Clark Trucking, LLC 12407 N Mo Pac Expy Ste 250 Austin Tx 78758	Duane Lewis Clark citytransportersinc@gmail.com 3134024398	MDB	M/African American	AU
	MAR7095015 MARIE'S TRUCKING 2314 Wagon Crossing Path Austin Tx 78744-4330	ANNA KELLOUGH mariekellough@yahoo.com 512-441-0775 Fax: 512-441-0549	MWDB	F/Asian	AU
	MEL8302760 MELENDREZ TRUCKING LLC 11608 Moore Rd Austin Tx 78719-9652	ADAM MELENDREZ meltrks@melendreztrucking.com 512-243-3977 Fax: 512-243-3947	MWDB	F/Hispanic	AU
	MIS8315318 Misty Carter 18700 Windless Way Pflugerville Tx 78660	Misty Carter whitemmisty@yahoo.com 5126190327	MWDB	F/African American	AU
	V00000934880 NDL TRANSPORT INC 902 Bodgers Dr Austin Tx 78753	Noe De Leon ndltransport1325@gmail.com 5123942783 Fax: 5128212532	MB	M/Hispanic	AU

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C Code & Description	Vend Code/Adr	Contact Information	W/M/B Code	G/E	LCTN
V00000934400 Oliver Cueva Po Box 526 Pflugerville Tx 78615		Oliver Alexander Cueva oliver@cavetrucking.com 5123549084	MDB	M/Hispanic	SL
V00000935429 Oviedo Trucking LLC 3820 Julianas Way Round Rock Tx 78665		Adrian Oviedo oviedoadiran@yahoo.com 5123732019	MB	M/Hispanic	AU
VS0000016867 PANTHER CREEK TRANSPORTATION INC Po Box 2715 Georgetown Tx 78627		Natalia Taylor Natalia@panthercreektransportation.com 512-746-4224 Fax: 512-746-5103	MWDB	F/Hispanic	SL
V00000931016 Pete Ignacio Balderas 7224 White Panda Run Del Valle Tx 78617		Pete Balderas pete.marybalderas@gmail.com 5127892776 Fax: 5127706237	MB	M/Hispanic	AU
RAM8306287 RAMI TRANSPORTATION INC 7719 Mcangus Rd Del Valle Tx 78617-5911		DAMASO ROJO ramitrans@aol.com 512-845-8358 Fax: 512-247-6416	MDB	M/Hispanic	AU
VC0000103438 RBR TRUCKING, INC. 9501 W. State Hwy 29 Liberty Hill Tx 78642		RONALD QUIROA rbr.trucking@yahoo.com 5128096214 Fax: 5122603354	MB	M/Hispanic	SL
V00000934972 RUBEN P ROCHA 8501 S Fm 973 Rd. Austin Tx 78719		Ruben Paul Rocha rubenrocha777@gmail.com 5129981633	MB	M/Hispanic	AU
V00000943081 Ralph Anthony Wright 1716 Meander Dr Austin Tx 78721		Ralph A Wright wright_ralph@yahoo.com 5127913644 Fax: 5125240698	MB	M/African American	AU
V00000963680 Raul Cano-Gasca 182 Plumbago Cv Buda Tx 78610-9007		Raul Cano rcanotrucking@yahoo.com 5127621217	MB	M/Hispanic	SL
V00000905724 Robert E Ashford P O Box 16478 Austin Tx 78761		Robert Earl Ashford ashnemtrucking@hotmail.com 512-247-1293	MDB	M/African American	AU
V00000933636 Robert M Medel 10811 San Jose Venue Del Valle Tx 78617		Robert M Medel medeltrucking@yahoo.com 5128500827 Fax: 5122439414	MDB	M/Hispanic	AU

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Phase: 1

C Code & Description	Vend Code/Adr	Contact Information	W/M/B Code	G/E	LCTN
	SAM7042190 SAMMIE J KELLOUGH 2314 Wagon Crossing Path Austin Tx 78744-4330	SAMMIE J KELLOUGH kelloughj@aol.com 512-441-0775 Fax: 512-441-0549	MDB	M/African American	AU
	V00000916591 SERNA'S TRUCKING, LLC P.O. Box 2100 Kyle Tx 78640	CLAUDIA SERNA serna.trucking@gmail.com 512-466-7084 Fax: 5123924726	MWDB	F/Hispanic	SL
	DOU8314208 SETO VARGAS UTILITIES INC 5300 Navarro Creek Rd Del Valle Tx 78617	SATURNINO VARGAS yeyevargas@yahoo.com 5125609972	MB	M/Hispanic	AU
	TEX4863000 TEXAS TRUCKING CO INC 3900 Shell Rd Georgetown Tx 78628-9249	GEORGE ELIZONDO GEORGETTC@YAHOO.COM 512-868-5558 Fax: 512-930-0298	MDB	M/Hispanic	SL
	TRI7012850 TRI RECYCLING INC Po Box 26499 Austin Tx 78755-0499	GERRY ACUNA trirecycle@aol.com 512-329-0172 Fax: 512-329-0174	MDB	M/Hispanic	AU
	V00000938729 Walkers Journey Trucking LLC 271 Gruetzner Ln Elgin Tx 78621	Glyn Walker walkersjourneytrucking@gmail.com 5127692909	MWDB	F/African American	SL
<b>96884 Traffic Control Device Placement and Removal Service</b>					
	V00000918979 Accurate Pavement Striping LLC 2411 Patterson Industrial Dr Ste #B Pflugerville Tx 78660	Shannon McCleery shannon@weraccurate.com 512-244-7000 Fax: 5122441309	MWDB	F/Hispanic	AU
	VC0000102723 Avery Williamson 1407 Brandi Lane Round Rock Tx 78681	AVERY WILLIAMSON averyslawncare@att.net 512-845-6251 Fax: 512-388-7303	MDB	M/African American	SL
	V00000955636 COE Concepts 4408 Hwy 183 S Austin Tx 78739	regina a Esteves rae2018.coe@gmail.com 5124686395 Fax: 5123940293	MWB	F/Hispanic	AU
	VS0000030988 EAR Telecommunications LLC Eartc 16201 Bratton Ln Austin Tx 78728	Carlos Reyes carlos.reyes@eartc.com 5128401868 Fax: 5128401893	MDB	M/Hispanic	AU
	V00000950564 RoadWise Solutions LLC 1920 E. Riverside Dr., Suite A-120 #380 Austin Tx 78741	David Viera david.rwsolutions@gmail.com 5124095212	MDB	M/Hispanic	AU

**City of Austin  
Subcontract Vendor List - VCRCVS**

**Solicitation No.: RFP 1100 EAL3011REBID Distribution Line Clearance, Street and Nightwatchman Lights**

**Version No.: 1**

**Phase: 1**

<b>C Code &amp; Description</b>	<b>Vend Code/Adr</b>	<b>Contact Information</b>	<b>W/MB Code</b>	<b>G/E</b>	<b>LCTN</b>
	V00000962669 Victor Pena 17801 Aleppo Pine Trl Elgin Tx 78621	Victor Pena ptsvpena@gmail.com 5127992969	MDB	M/Hispanic	SL
	V00000922275 WaterFilled Barrier Systems International, Inc. 195 Stockade Ranch Rd., B Paige Tx 78659	Jennifer McKeon jennifer@wbsintl.com 8449274685 700 Fax: 5127278620	WDB	F/Caucasian	SL
<b>98887 Tree Trimming, Utility Lines (Energized) OSHA 29CFR 1910.269</b>					
	VC0000101862 GTT & PREFERRED LANDSCAPING INC 8409 Indian Summit Austin Tx 78737	ALMA GARCIA office@gttatx.com 512-288-2867 Fax: 866-268-9597	MDB	M/Hispanic	SL

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Phase: 1

C Code & Description	Vend Code/Adr	Contact Information	W/MB Code	G/E	LCTN
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### Vendors Outside the SLBP Area

#### 96239 Hauling Services

V00000922619 BENITO MUNOZ Po Box 592656 San Antonio Tx 78259	5127498126  erikrmunoz@yahoo.com		MB	M/Hispanic	TX
VS0000027560 SAR Transportation, L.L.C. 11325 F.M. 156 South Justin Tx 76247	9402420666 9402420673 pam@sartrans.com		WB	F/Caucasian	TX

Total in SLBP:	58
Total Outside SLBP:	2

## GOOD FAITH EFFORTS OVERVIEW (CITY OF AUSTIN ORDINANCE 2-9A-D)

### At a minimum, the following should be submitted to support Good Faith Effort documentation:

- Solicitation sent to MBE/WBE firms **in the** Significant Local Business Presence (SLBP – 5 Counties include Travis, Hays, Williamson, Bastrop, and Caldwell) identified on the availability list for subcontracting opportunities not less than **7 business days** prior to bid date. Notices must be sent using two separate reasonable, available, and verifiable methods (e.g. email, fax, mail, or phone).
  - **Such as evidence of written notice includes copy of letters (solicitation notice) that was sent by email, fax, or mail.**
  - **Such as evidence of two separate methods used to notify MBE/WBEs include fax logs, email confirmations, copies of stamped envelopes/hand-delivered and/or phone logs (Phone contacts, alone, will not be sufficient.)**
- Written correspondence to certified vendors should include names, addresses, and other identifying information including your company's phone number, contact person, where to locate plans and specifications; and due date for responding.
- Take appropriate steps to follow up the initial solicitation with interested MBEs or WBEs.
  - **Submit copies of written responses from all respondents to your solicitation.**
  - **If interested MBEs or WBEs responded, document follow up on log of contacts and include date and contact information**
- Publish notice in a local publication such as newspaper, trade association publication, or via electronic/social media. (*Facebook Business Page, LinkedIn Business Profile, Twitter Business Account, or see below for a list of local minority trade publishers*)
  - Bidder/proposer must state a specific and verifiable reason for not contacting each certified firm with a SLBP.
    - **If MBEs and WBEs were not sent solicitation notices, document reason on log of contacts.**
  - Negotiate in good faith with interested MBEs and WBEs.
    - **If negotiated in good faith with interested MBEs and WBEs, document results on log of contacts.**
- Contact SMBR for assistance (i.e. additional scopes identified or assistance with MBE/WBE Program requirements).
- Not rejecting MBEs or WBEs as being unqualified without sound reasons.
- Seeking the services of available minority and women community organizations (*See below*)
  - **Documentation of contacts with trade associations and Chambers of Commerce.**
- Selecting portions of the work that will increase the likelihood that the MBE/WBE goals will be met.

### The following additional Good Faith Efforts factors may also be considered:

- Efforts to assist MBE/WBEs in bonding, insurance, and financing where appropriate.
  - **If assistance was provided, document in log of contacts.**
- Efforts to assist MBE/WBEs in obtaining necessary equipment, supplies, and materials.
  - **If assistance was provided, document in log of contacts.**

In assessing minimum good faith efforts, SMBR may consider the performance of other Bidder/Proposers successfully meeting the goals.

**FAILURE TO COMPLY WITH THE MBE/WBE PROCUREMENT ORDINANCE MAY RESULT IN A DETERMINATION OF NON-COMPLIANCE OR REJECTION OF YOUR REQUEST FOR CHANGE**

## SMALL & MINORITY BUSINESS RESOURCES CONTACT INFORMATION

<u>Compliance</u>	<u>CERTIFICATION</u>	<u>MAIN OFFICE</u>
512-974-7600	512-974-7645	512-974-7600
512-974-7601	512-974-7601	512-974-7622
Smbrcompliancedocuments@austintexas.gov	smbrcertification@austintexas.gov	www.austintexas.gov/smbr

### **SMBR's Plan Room**

The City of Austin's Small & Minority Business Resources (SMBR) Department has a Plan room for viewing City of Austin project plans and specifications as well as other local, private, and public sector jobs. In addition, SMBR and McGraw-Hill Dodge have partnered to provide contractors up-to-date construction project information, plans and specification through the Internet. Projects include public and private sector opportunities in 100 South and Central Texas counties.

#### ***Where is the Plan Room?***

It's located at the offices of SMBR  
4201 Ed Bluestein Blvd.  
Austin, TX 78721

#### ***How much will it cost?***

There are no fees to access the information. There are minimal fees for copying and printing of plan and specification sheets.

#### ***What are my next steps?***

Attend a free one-hour orientation session to learn how to operate the on-line service. Call (512) 974-7799 to make an appointment or for more information.

For more information or to view a list of projects currently available in the Plan Room visit website at [www.austintexas.gov/smbr](http://www.austintexas.gov/smbr) under the Plan Room projects.

### **BONDING**

Bonding is a type of protection that a governmental agency or prime contractor may require that your company have in order to work on a contract. A bonding application will take several days. Get started today. Be proactive by making an appointment to talk to SMBR's Bonding Financial Consultant, Luke Ortega Luper as soon as possible. He can be reached at (512-974-7733 or email him at [Luke.Luper@austintexas.gov](mailto:Luke.Luper@austintexas.gov). You will also find past copies of his newsletters on our website at <http://austintexas.gov/department/bonding>.

Keep in mind that SMBR does not issue bonds; however, we do provide our bonding resource program as a free and confidential service to our business owners.

## AUSTIN MINORITY NEWSPAPERS

### **Capital City Argus News**

PO Box 140471  
Austin, TX 78714-0471  
512-926-0348 Fax: same as phone

Charles M. Miles

Email: [CMilesArgus@yahoo.com](mailto:CMilesArgus@yahoo.com)

### **El Mundo Newspaper**

2112 E. Cesar Chavez  
Austin, TX 78702  
512-476-8636

Email: [info@elmundonewspaper.com](mailto:info@elmundonewspaper.com)

### **La Prensa**

PO Box 6504  
Austin, TX 78762-6504  
512-478-3090 Fax: 512-482-6400

Catherine Vasquez-Revilla

Email: [laprensa@aol.com](mailto:laprensa@aol.com)

### **Nokoa The Observer**

PO Box 1137  
Austin, TX 78767  
512-499-8713 Fax: same as phone

Akwasi Evans

Email: [akwasievans2013@gmail.com](mailto:akwasievans2013@gmail.com)

### **The Villager**

4132 E. 12th Street  
Austin, TX 78721  
512-476-0082 Fax: 512-476-0179

Tommy L. Wyatt

Email: [vil3202@aol.com](mailto:vil3202@aol.com)

### **World Journal Inc. of Texas/World Journal Chinese Daily News**

5855 Sovereign Dr. #C  
Houston, TX 77036

Sherry Wang

Email: [sherrywang1020@yahoo.com](mailto:sherrywang1020@yahoo.com)

## **LOCAL MINORITY SERVICE ORGANIZATIONS**

### **Asian Contractor Association**

4201 Ed Bluestein Blvd, 2nd floor  
Austin, TX 78721  
512-926-5400 Fax: 512-926-5410

Aletta Banks

[www.acta-austin.com](http://www.acta-austin.com)

Email: [asiancontractor@gmail.com](mailto:asiancontractor@gmail.com)

### **Austin Area Black Contractors Association**

6448 Highway 290 East, Suite E-107  
Austin, TX 78723  
512-467-6895 Fax: 512-467-9808

Carol Hadnot

[www.abcatx.com](http://www.abcatx.com)

Email: [brc-pro@att.net](mailto:brc-pro@att.net)

### **Business Investment Growth (BIG Austin)**

Capital Plaza Bank Office Building  
5407 N. IH-35, Ste 200  
Austin, TX 78723  
512-928-8010 Fax: 512-926-2997

Stacy Dukes-Rhone

[www.bigaustin.org](http://www.bigaustin.org)

Email: [info@bigaustin.org](mailto:info@bigaustin.org)

### **Business Resource Consultants (BRC)/(Bid Briefs)**

6448 Highway 290 East, Suite E-107  
Austin, TX 78723  
512-467-6894 Fax: 512-467-9808

Carol S. Hadnot

Email: [brc-pro@att.net](mailto:brc-pro@att.net)

### **Greater Austin Asian Chamber of Commerce**

8001 Centre Park Drive, Suite 160  
Austin, TX 78731  
512-407-8240

Jodie Huynh

[www.austinasianchamber.org](http://www.austinasianchamber.org)

Email: [jhuynh@austinasianchamber.org](mailto:jhuynh@austinasianchamber.org)

### **Greater Austin Black Chamber of Commerce**

African-American Heritage Center  
912 E. 11th Street, Suite A  
Austin, TX 78702  
512-459-1181 Fax: 512-459-1183

Tam Hawkins

[www.austinbcc.org](http://www.austinbcc.org)

Email: [admin@austinbcc.org](mailto:admin@austinbcc.org)

### **Greater Austin Hispanic Chamber of Commerce**

3601 Far West Blvd, Suite 204  
Austin, TX 78731  
512-476-7502 Fax: 512-476-6417

Casilda Clarich

[www.gahcc.org](http://www.gahcc.org)

Email: [cclarich@gahcc.org](mailto:cclarich@gahcc.org)

### **U.S. Hispanic Contractors Association de Austin (USHCA)**

920 E. Dean Keeton Street  
Austin, TX 78705  
512-922-0507

Juan Oyervides

[www.ushca-austin.com](http://www.ushca-austin.com)

Email: [info@ushca-austin.com](mailto:info@ushca-austin.com)

A. Garcia Trucking Inc  
1000 Dacy Lane  
Kyle Tx 78640

Antonio Ramos Lizardo  
11105 Pearce Ln  
Del Valle Tx 78617

Accurate Pavement Striping Llc  
2411 Patterson Industrial Dr Ste #B  
Pflugerville Tx 78660

Alberto R Guerra  
1302-A Highway 71 W  
Bastrop Tx 78602

Avery Williamson  
1407 Brandi Lane  
Round Rock Tx 78681

Barbara White  
9701 Wayside Blvd  
Austin Tx 78724

Benito Munoz  
Po Box 592656  
San Antonio Tx 78259

Bonifacio Reyes Rangel  
2108 E 16th St  
Austin Tx 78702

Bridget C Thomas  
1514 Ed Bluestein Ste 101  
Austin Tx 78721

Cgt Aus Inc  
12730 Laws Rd  
Buda Tx 0

Cms 2 Trucking Inc  
Po Box 141423  
Austin Tx 0

Coe Concepts  
4408 Hwy 183 S  
Austin Tx 78739

Comanche Xpress Llc  
Po Box 144402  
Austin Tx 78714

Cantu Construction Inc  
14806 Eilers Rd  
Austin Tx 78719

Cave Trucking, Llc  
Po Box 526  
Pflugerville Tx 78615

Cynthia Cueva-Luna  
Po Box 180233  
Austin Tx 78718

David Dela Cerda  
2302 Southwood Hills Dr  
Taylor Tx 76574

Dawn Smith  
11516 Sunny Creek Ln  
Manor Tx 78653

Ear Telecommunications Llc  
Eartc 16201 Bratton Ln  
Austin Tx 78728

Felis Balderas Sr.  
6803 Viewing Place  
Austin Tx 78719

Fernandez Trucking  
12221 Hulseley Rd Unit 2  
Manor Tx 78653

Fuego Transportation Llc  
1912 Dry Season Trl.  
Austin Tx 78754

Garcia J Contractors Inc  
Po Box 1649  
Buda Tx 78610

Gtt & Preferred Landscaping Inc  
8409 Indian Summit  
Austin Tx 78737

Ivy'S Trucking Corp  
127 Elm Grove Ct  
Dale Tx 78616

J A Road Boring  
1000 Dacy Ln  
Kyle Tx 0

Jag Trucking Inc  
800 Private Rd 917  
Georgetown Tx 78626

Jc Torres Llc  
2419 Hallie Lane  
Round Rock Tx 78664

Juan Deanda Trucking Llc  
5101 Hwy 21  
Maxwell Tx 78656

Johnson Hauling, Llc  
1805 Elmira  
Austin Tx 78721

L Contractors, Llc  
5415 Mckinney Falls Pkwy  
Austin Tx 78744

Lillie'S Trucking Inc  
1110 Radam Cir  
Austin Tx 0

Lorraine Flores  
952 Skyline Rd  
Dale Tx 0

Lewis Clark Trucking, Llc  
12407 N Mo Pac Expy Ste 250  
Austin Tx 78758

Marie'S Trucking  
2314 Wagon Crossing Path  
Austin Tx 0

Melendrez Trucking Llc  
11608 Moore Rd  
Austin Tx 0

Misty Carter  
18700 Windless Way  
Pflugerville Tx 78660

Ndl Transport Inc  
902 Bodgers Dr  
Austin Tx 78753

Oliver Cueva  
Po Box 526  
Pflugerville Tx 78615

Oviedo Trucking Llc  
3820 Julianas Way  
Round Rock Tx 78665

Panther Creek Transportation Inc  
Po Box 2715  
Georgetown Tx 78627

Patricia K White  
9901 Brodie Ln. Ste 160-284  
Austin Tx 78748

Pete Ignacio Balderas  
7224 White Panda Run  
Del Valle Tx 78617

Rami Transportation Inc  
7719 Mcangus Rd  
Del Valle Tx 0

Rbr Trucking, Inc.  
9501 W. State Hwy 29  
Liberty Hill Tx 78642

Ruben P Rocha  
8501 S Fm 973 Rd.  
Austin Tx 78719

Ralph Anthony Wright  
1716 Meander Dr  
Austin Tx 78721

Raul Cano-Gasca  
182 Plumbago Cv  
Buda Tx 0

Roadwise Solutions Llc  
1920 E. Riverside Dr., Suite A-120 #380  
Austin Tx 78741

Robert E Ashford  
P O Box 16478  
Austin Tx 78761

Robert M Medel  
10811 San Jose Venue  
Del Valle Tx 78617

Sammie J Kellough  
2314 Wagon Crossing Path  
Austin Tx 0

Sar Transportation, L.L.C.  
11325 F.M. 156 South  
Justin Tx 76247

Serna'S Trucking, Llc  
P.O. Box 2100  
Kyle Tx 78640

Seto Vargas Utilities Inc  
5300 Navarro Creek Rd  
Del Valle Tx 78617

Texas Trucking Co Inc  
3900 Shell Rd  
Georgetown Tx 0

Tri Recycling Inc  
Po Box 26499  
Austin Tx 0

Victor Pena  
17801 Aleppo Pine Trl  
Elgin Tx 78621

Walkers Journey Trucking Llc  
271 Gruetzner Ln  
Elgin Tx 78621

Waterfilled Barrier Systems International, Inc.  
195 Stockade Ranch Rd., B  
Paige Tx 78659