

CITY OF AUSTIN, TEXAS

Purchasing Office

REQUEST FOR PROPOSAL (RFP)

Offer Sheet

SOLICITATION NO: MSO0062

COMMODITY/SERVICE DESCRIPTION: Laboratory Information Management System for Austin Water Utility

DATE ISSUED: October 17, 2011

MANDATORY PRE-PROPOSAL CONFERENCE TIME AND DATE: 10:00 a.m. on November 1, 2011

REQUISITION NO.: 5600-11090600556

COMMODITY CODE: 20811

LOCATION: Walnut Creek Wastewater Treatment Plant, 7113 FM 969, Austin, TX 78724, Administration Building Multi-Purpose Room (Call 512-972-1402 if lost)

FOR CONTRACTUAL AND TECHNICAL ISSUES CONTACT:

PROPOSAL DUE PRIOR TO: 1:00 p.m. on November 29, 2011

Art Acuña
Art.Acuna@AustinEnergy.com

COMPLIANCE PLAN DUE PRIOR TO: N/A

PROPOSAL CLOSING TIME AND DATE: 1:00 p.m. on November 29, 2011

Senior Buyer
Phone: (512) 322-6307

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET
RM 310, AUSTIN, TEXAS 78701

It is the policy of the City of Austin to involve certified Minority Owned Business Enterprises (MBEs) and Woman Owned Business Enterprises (WBEs) in City contracting. MBE and WBE goals for this Solicitation are contained in Section 0900.

All Contractors and Subcontractors must be registered to do business with the City prior to submitting a response to a City Solicitation. In the case of Joint Ventures, each individual business in the joint venture must be registered with the City prior to submitting a response to a City solicitation. If the Joint Venture is awarded a contract, the Joint Venture must register to do business with the City. Prime Contractors are responsible for ensuring that their Subcontractors are registered. Registration can be done through the City's on-line vendor registration system. Log onto <https://www.cityofaustin.org/purchase> and follow the directions.

SUBMIT 1 ORIGINAL AND 14 SIGNED COPIES OF RESPONSE

SOLICITATION TO:

Insert Vendor Name & Address

Signature of Person Authorized to Sign Offer

Signer's Name and Title: (please print or type)

FEDERAL TAX ID NO. _____

Date: _____

Company Name: _____

Address: _____

City, State, Zip
Code _____

Phone No. (_____) _____ Fax No. (_____) _____

BELOW INFO MUST MATCH THE NAME AND ADDRESS ON INVOICE AND IN COMPANY PROFILE WITH CITY

Company "Remit To"

Name: _____

Remit to Address: _____

City, State, Zip

Code

Email

Address

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All other Sections may be viewed at: <https://www.cityofaustin.org/purchase> by clicking the link to "Vendor Self Service (VSS)", sign in if registered, register, or use public access to follow the links to "Business Opportunities" and "Search for Solicitation."

RETURN FOLLOWING DOCUMENTS WITH BID/PROPOSAL/QUOTE/RESPONSE/SUBMITTAL**

- Cover Page Offer Sheet
- Sections 0800 - 0835 Certifications and Affidavits (return all applicable Sections)
- Section 0900 MBE/WBE Procurement Program Package or No Goals Utilization Plan, if applicable

**** See also Section 0200, Solicitation Instructions, Section 0400, Supplemental Purchase Provisions, and Section 0500, Scope of Work/Specification, for additional documents that must be submitted with the Offer.**

NOTES:

The Vendor agrees, if this Offer is accepted within 120 calendar days after the Due Date, to fully comply in strict accordance with the Solicitation, specifications and provisions attached thereto for the amounts shown on the accompanying Offer.

* **INCORPORATION OF DOCUMENTS.** Section 0100, Standard Purchase Definitions; Section 0200, Standard Solicitation Instructions; and Section 0300, Standard Purchase Terms and Conditions are hereby incorporated into this Solicitation by reference, with the same force and effect as if they were incorporated in full text. The full text versions of these Sections are available, on the Internet at the following online address: <http://www.ci.austin.tx.us/purchase/standard.htm>.

If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office at the below address. Please have the Solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed, or faxed to you.

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

P.O. Address for US Mail	Street Address for Hand Delivery or Courier Service
City of Austin	City of Austin, Purchasing Office
Purchasing Office	Municipal Building
P.O. Box 1088	124 W 8 th Street, Rm 310
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

Notes: Offers (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered. Unless authorized in the Solicitation, telegraphic or facsimile Offers will not be accepted.

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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 Purchasing Office by 4:00 p.m. on November 4, 2011. Inquiries should be e-mailed to Art.Acuna@AustinEnergy.com.

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 contain the solicitation number and the Buyer's name and shall be mailed to the following address:

City of Austin Purchasing Office
Attn: Mick Osborne
P. O. Box 1088
Austin, Texas 78767

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 \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 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 WC 420304, or equivalent coverage

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- (b) Thirty (30) days Notice of Cancellation, Form WC 420601, or equivalent coverage
 - ii. Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries).
 - (1) The policy shall contain the following provisions:
 - (a) Blanket contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Independent Contractor's Coverage.
 - (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 Underground Coverage (X,C,U).
 - (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 \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage.
- 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.
- D. Certificate: The following statement must be shown on the Certificate of Insurance.

The City of Austin is an Additional Insured on the general liability and the auto liability policies. A Waiver of Subrogation is issued in favor of the City of Austin for general liability, auto liability and workers compensation policies.

3. TERM OF CONTRACT

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- A. The Contract shall be in effect through final system acceptance and the warranty period and may be extended thereafter for up to four additional 12-month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.
- B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on 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. A price increase, subject to the provisions of this Contract, may be requested by the Contractor (for each period of extension) for approval by the City’s Purchasing Officer or his designee.

4. INVOICES and PAYMENT (reference paragraphs 12 and 13 in Section 0300)

- A. Invoices shall contain a non-duplicated 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:

	City of Austin
Department	Communications and Technology Management
Attn:	IT Procurement
Address	PO Box 1088
City, State Zip Code	Austin, TX 78767

- 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.

5. RETAINAGE

The City will withhold ten percent (10%) retainage until completion of all work required by the Contract. The Contractor’s invoice shall indicate the amount due, less the retainage. Upon final acceptance of the work, the Contractor shall submit an invoice for the retainage to the City and payment will be made as specified in the Contract. Payment of the retainage by the City shall not constitute nor be deemed a waiver or release by the City of any of its rights and remedies against the Contractor for recovery of amounts improperly invoiced or for defective, incomplete or non-conforming work under the Contract.

6. LIVING WAGES AND BENEFITS

- A. In order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring

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fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a “living wage” and affordable health care protection. Currently, the minimum wage for City employees is \$11.00 per hour. This minimum wage is required for any Contractor employee directly assigned to this City Contract, 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. Additionally, the City provides health insurance for its employees, and for a nominal rate, employees may obtain coverage for their family members. Contractors must offer health insurance with optional family coverage for all Contractor employees directly assigned to this contract. Proof of the health care plan shall be provided prior to award of a Contract. In addition, an insurance certificate for Workers’ Compensation Insurance Coverage must be provided if required by the solicitation.
- C. The City requires Contractors submitting Offers on this Contract to provide a signed certification (**see the Living Wages and Benefits Contractor Certification included in the Solicitation**) with their Offer certifying that all employees directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$11.00 per hour and are offered a health care plan. The certification shall include a list of all employees 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.
- D. 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). Basic employment records shall at a minimum include:
 - i. employee’s full name, as used for social security purposes, and on the same record, the employee’s identifying symbol or number if such is used in place of name on any time, work, or payroll records;
 - ii. time and date of week when employee’s workweek begins;
 - iii. hours worked each day and total hours worked each workweek;
 - iv. basis on which employee’s wages are paid;
 - v. regular hourly pay rate;
 - vi. total daily or weekly straight-time earnings;
 - vii. total overtime earnings for the workweek;
 - viii. all additions to or deductions from the employee’s wages;
 - ix. total wages paid each pay period; and
 - x. date of payment and the pay period covered by the payment.
- E. The Contractor shall provide with the first invoice and as requested by the Department’s Contract Manager, individual Employee Certifications (**see the Living Wages and Benefits Employee Certification included in the Solicitation**) for all employees directly assigned to the contract containing:
 - i. the employee's name and job title;
 - ii. a statement certifying that the employee is paid at a rate equal to or greater than the Living Wage of \$11.00 per hour;
 - iii. a statement certifying that the employee is offered a health care plan with optional family coverage.

Employee Certifications shall be signed by each employee directly assigned to the contract.

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- A. Contractor shall submit employee certifications quarterly with the respective invoice to verify that employees are paid the Living Wage throughout the term of the contract.
- G. The Department's 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 identified in paragraph D above to verify compliance with this provision.

7. NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING

- A. The Austin City Council adopted Ordinance No. 20071206-045 on December 6, 2007, adding a new Article 6 to Chapter 2-7 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services exceeding \$5,000. During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the person designated in the Solicitation as the contact for questions and comments regarding the Solicitation.
- B. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
- C. The City requires Offerors submitting Offers on this Solicitation to provide a signed affidavit certifying that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance (**see the Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit included in the Solicitation**).

8. 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.
- A. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.

9. PRODUCT WARRANTY

All product and service warranties, including third party software, are to begin upon final user acceptance testing, which acceptance shall be done in writing to the Licensor.

10. ADDITIONAL CHANGES TO EXISTING PROVISIONS OF THE COA STANDARD PURCHASE TERMS AND CONDITIONS (0300):

- 1. The introductory paragraph of Section 0300 is amended to read:

By submitting an Offer in response to the Solicitation, the Licensor agrees that the Contract shall

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be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8 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.

2. Section 0300 Paragraph 21, "Warranty – Deliverables," is deleted in its entirety.
3. Section 0300 Paragraph 38, "Ownership and Use of Deliverables," is deleted in its entirety.

11. **RIGHT TO USE AND ADAPT**

Except as specified herein and in the Licensor Software License Schedule and Software Support Schedule, there shall be no restrictions on Purchaser's rights to use or move the Software to a new location within the State of Texas. Purchaser's rights and protections in this section shall survive the termination of the Contract.

12. **FORCE MAJEURE**

The nonperformance or delayed performance by Licensor or City of any obligation under the Contract shall be excused if such nonperformance or delay is caused by circumstances beyond its control ("Force Majeure"), except to the extent that Licensor knew or should have been able to foresee the likelihood of such an event prior to City's award of the contract and failed to inform City thereof. Items beyond the control of the parties include but are not limited to: acts of a public enemy; natural disasters; epidemics or quarantine restrictions; war, riot, or sabotage; fire, floods, accidents, strikes, or shortages of transportation, facilities, fuel, energy, labor or materials, or supplier delays; and acts of civil or military authority having jurisdiction.

In the event of any delay which can be shown to be attributable to any of the foregoing causes, the date for performance of the relevant provision shall be extended for a period equal to the time lost by reason of the delay but in no event longer than one hundred twenty (120) days, at which time the City may elect to terminate the contract, providing the Licensor or City, as applicable, has taken reasonable steps to proceed with the performance of the Contract and has made written notification of such delay and of any corrective action taken. Project milestone dates shall be adjusted by the amount of time attributable to the delay. Licensor shall not be entitled to any increase in compensation. The following delays shall not constitute excusable delays in performance by Licensor and shall not constitute a reason for extending the date for performance of the Contract:

- i. Delays by sub Licensors or by suppliers for reasons other than those defined above.
- ii. Delays in documentation approval due to inadequate design or documentation or to unrealistic approval schedules.
- iii. Delays caused by Licensor's lack of sufficient personnel with the necessary technical skills.

In the event that the Software becomes inoperable, fails to function, or is incapable of operating as a result of causes beyond Licensor's reasonable control, including but not limited to the situations listed in subparagraph (a) above, then City shall be entitled, as its sole remedy for such failure, to an abatement of the Licensing, Maintenance and Operations fees payable hereunder, it being agreed that such a failure is not a default by Licensor, and that this abatement represents a fair and reasonable remedy and allocation of risk between City and Licensor.

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13. **FINAL ACCEPTANCE**

Final acceptance of the Software and Services is defined as successful completion by Licensor of all Deliverables (including all required customizations) and payment milestones for all phases as stated in the Milestone Deliveries and Payment Schedule, and after Purchaser's receipt of all final documentation reflecting all changes and corrections, including those resulting from site acceptance testing and availability testing. For an intermediate implementation phase, acceptance of the phase or milestone shall be deemed to occur when Purchaser has completed the review and acceptance testing for that portion of the project, and all Defects, if any, have been addressed to Purchaser's satisfaction. The warranty period shall begin only upon final acceptance.

Licensor shall request final acceptance in writing stipulating that:

The Milestone Deliveries and Payment Schedule is completed.

Final acceptance and payment does not constitute a waiver by Purchaser of any rights with respect to Licensor's continuing obligations under the Contract.

It agrees to a waiver of all claims beyond final payment by Licensor against Purchaser other than those previously made in writing and still unsettled.

Final acceptance of the Work will be confirmed by Purchaser in writing and by making the final payment to Licensor.

For those customizations Purchaser requests subsequent to those itemized in the original Contract and provided by Licensor, such customizations shall also be subject to the final acceptance process set forth in paragraphs A-C above. Licensor and Purchaser shall decide upon a mutually agreeable schedule for the development and completion of any such subsequent customization features.

14. **WARRANTIES BY LICENSOR AGAINST INFRINGEMENTS** The Licensor represents and warrants to the City that: (i) the Licensor shall provide the City good and indefeasible license or sublicense to the Deliverables (as appropriate) and (ii) the Deliverables supplied by the Licensor in accordance with the specifications in the Contract do not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; (iii) that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and (iv) the Licensor does not know of any valid basis for any such claims. The Licensor 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 of the rights associated with the City's ownership, or if applicable, license rights, and its use of the Deliverables as set forth in this Contract infringes the intellectual property rights of any third party; or (ii) the Licensor's breach of any of Licensor'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 at its own expense or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Licensor agrees that the City's specifications regarding the Deliverables shall in no way diminish Licensor'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 Licensor. If a claim described above may be or has been asserted, City shall permit Licensor, at Licensor's expense, to provide one of the following remedies in the following prioritized order, all at no additional cost to City: (i) procure the right to continue using

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the Software; or (ii) replace or modify the Software to eliminate the infringement while providing substantially equivalent functional performance. If Licensor remedies the claim by providing City replacement Software, City may reject such option, if in its reasonable judgment the replacement Software does not provide equivalent functional performance. Licensor shall have no indemnity obligation to the City under this Section if the infringement claim results from and would not have occurred but for (i) a modification of the Intellectual Property not provided by Licensor or authorized in writing by an authorized representative of Licensor, (ii) the failure to use any corrective update or the most recent version of the Intellectual Property, provided at no cost to the City, or (iii) the combination of the Intellectual Property with other non-Licensor products, other than such other Software as is reasonably intended for use with the Intellectual Property and approved in advance by an authorized representative of Licensor.

15. **WARRANTY – SOFTWARE AND OTHER NON-SERVICE DELIVERABLES** The Licensor warrants and represents that during the Warranty Period all Deliverables purchased, licensed, or sublicensed to the City under the Contract shall be free from material defects in design, workmanship or manufacture, will function substantially in accord with their documentation, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Licensor, 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.

A. The Licensor 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 not less than one year from the date of Final Acceptance of the Deliverables or from the date of Final Acceptance of any replacement Deliverables. If during the Warranty Period, one or more of the above warranties in this Section are breached, the Licensor shall promptly upon receipt of demand either use commercially reasonable efforts to correct the non-conforming Deliverables, or replace the non-conforming Deliverables with materially 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 Licensor. The City shall endeavor to give the Licensor written notice of the breach of warranty within thirty (30) days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section. If City elects to allow Licensor to correct the non-conforming Deliverable and notifies Licensor before the expiry of the Warranty Period that the Software does not function substantially as warranted, Licensor shall use commercially reasonable efforts to rectify each such non-conformity within the Warranty Period. If any such non-conformity, which has been reasonably verified or replicated by Licensor, has not been rectified by Licensor within the Warranty Period, the Warranty Period shall be extended until such non-conformity is rectified but in no case more than thirty (30) days from notice date. If during the Warranty Period, a non-conformity remains uncorrected for more than thirty (30) days from the time Licensor is informed of the non-conformity, then the City may (at its sole discretion and as its sole and exclusive monetary remedy): (i) reduce the quantity of Deliverables it may be required to purchase under the Contract from the Licensor, and obtain an immediate refund of money paid by the City for the non-conforming Deliverables; provided, however, that in addition to (and notwithstanding the foregoing) the City may seek any other monetary remedy available under this Agreement if Licensor fails to use its reasonable best efforts to correct the non-conformity. In addition, and notwithstanding the above, this paragraph shall not apply to any contractual requirements on Licensor to provide either insurance or indemnification and shall not limit the operation of or remedies provided by those sections of the Contract.

Licensor warrants that it will perform a standard virus check for known viruses prior to shipping the Software to City. Additionally, Licensor warrants that, to its knowledge, it has not inserted any time

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bomb or other similar disabling device into the Software.

Licensor warrants and represents that it has taken reasonable steps in accordance with its standard procedures to test the Licensed Programs for which a license is granted hereunder for spy ware and malware code and for code that collects and/or distributes information without Licensee's or the actual user's consent (hereafter referred to as "Invasive Code"); that to Licensor's best knowledge the Licensed Programs are free of Invasive Code as of the date of delivery by Licensor, and that Licensor will continue to take such reasonable steps with respect to future enhancements or modifications to the Licensed Programs. Licensee will also take reasonable steps in its other procurements and in the operation of its operating environment to monitor for and detect the presence of Invasive Code from other sources.

C. If the Licensor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Licensor 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 Licensor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
NO GOALS UTILIZATION PLAN**

SOLICITATION NUMBER: MSO0062

PROJECT NAME: Laboratory Information Management System for Austin Water Utility

The City of Austin has determined that no goals are appropriate for this project. Even though no goals have been established for this solicitation, the Offeror is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.

If any service is needed to perform the Contract and the Offeror does not perform the service with its own workforce or if supplies or materials are required and the Offeror does not have the supplies or materials in its inventory, the Offeror shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Offeror must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

Will subcontractors or sub-consultants or suppliers be used to perform portions of this Contract?

No _____ If no, please sign the No Goals Form and submit it with your Offer in a sealed envelope.

Yes _____ If yes, please contact DSMBR to obtain further instructions and an availability list and perform Good Faith Efforts. Complete and submit the No Goals Form and the No Goals Utilization Plan with your Offer in a sealed envelope.

After Contract award, if your firm subcontracts any portion of the Contract, it is a requirement to complete Good Faith Efforts and the No Goals Utilization Plan, listing any subcontractor, subconsultant or supplier. Return the completed Plan to the Project Manager or the Contract Manager.

I understand that even though no goals have been established, I must comply with the City's MBE/WBE Procurement Program if subcontracting areas are identified. I agree that this No Goals Form and No Goals Utilization Plan shall become a part of my Contract with the City of Austin.

Company Name

Name and Title of Authorized Representative (Print or Type)

Signature

Date

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
NO GOALS UTILIZATION PLAN**
(Please duplicate as needed)

SOLICITATION NUMBER: MSO0062
PROJECT NAME: Laboratory Information Management System for Austin Water Utility

PRIME CONTRACTOR/CONSULTANT COMPANY INFORMATION

Name of Contractor/Consultant			
Address			
City, State Zip			
Phone		Fax Number	
Name of Contact Person			
Is company City certified?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture <input type="checkbox"/>

I certify that the information included in this No Goals Utilization Plan is true and complete to the best of my knowledge and belief. I further understand and agree that the information in this document shall become part of my Contract with the City of Austin.

Name and Title of Authorized Representative (Print or Type)

Signature

Date

Provide a list of all proposed subcontractors/subconsultants/suppliers that will be used in the performance of this Contract. **Attach Good Faith Efforts documentation if non MBE/WBE firms will be used.**

Sub-Contractor/Consultant			
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Ethnic/Gender Code:	<input type="checkbox"/> NON-CERTIFIED
Vendor ID Code			
Contact Person	Phone Number:		
Amount of Subcontract	\$		
List commodity codes & description of services			

Sub-Contractor/Consultant			
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Ethnic/Gender Code:	<input type="checkbox"/> NON-CERTIFIED
Vendor ID Code			
Contact Person	Phone Number:		
Amount of Subcontract	\$		
List commodity codes & description of services			

FOR DEPARTMENT OF SMALL AND MINORITY BUSINESS RESOURCES USE ONLY:

Having reviewed this plan, I acknowledge that the Offeror (HAS) or (HAS NOT) complied with the City Code, Chapters 2-9A, B, C, or D, as applicable

Reviewing Counselor _____ Date _____ Director/Deputy Director _____ Date _____

**CITY OF AUSTIN
PURCHASING OFFICE
"NO OFFER" REPLY FORM**

SOLICITATION NUMBER: MSO0062

Please Complete and Return This Form to the following address to Indicate a "No Offer" Reply

City of Austin
Purchasing Office
P.O. Box 1088
Austin, Texas 78767-8845

(DO NOT RETURN ALONG WITH OFFER)

Please check the appropriate box to indicate why your firm is submitting a "no offer" response. Failure to respond to three (3) consecutive solicitations may result in your company being removed from the source list for this commodity or service. Completion of this form will assist us in maintaining an accurate, up-to-date source list.

COMMODITY CODE: 20811

DESCRIPTION: Application Software

- Unable to supply item(s) specified. Remove my company from the source list for the Commodity / Service Group
- Unable to supply item(s) specified. Retain my company on the vendor list for this commodity / service.
- Cannot meet the Scope of Work / Specifications.
- Cannot provide required Insurance.
- Cannot provide required Bonding.
- Job too small.
- Job too large.
- Do not wish to do business with the City. Remove my company from the City's Vendor list.
- Other reason (please state why you will not submit a bid):

Contractor's Name: _____

Street Address _____

City, State, Zip Code _____

Signature of Officer or
Authorized _____

Representative: _____

Date: _____

Printed Name: _____

Title _____