CITY OF AUSTIN, TEXAS

Purchasing Office

REQUEST FOR QUALIFICATION STATEMENTS (RFQS)

OFFER SHEET

SOLICITATION NO: RFQS 5800 JSB4005

DATE ISSUED: February 10, 2020

REQUISITION NO.: 5800 19121600205

COMMODITY CODE: 95377, 91869

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

Primary Contact
John Besser, CTCM, CTPM
Procurement Specialist III
Phone: (512) 974-2261
Email: john.besser@austintexas.gov

COMMODITY/SERVICE DESCRIPTION: Citywide Cyber Liability Insurance

PRE-RESPONSE CONFERENCE TIME AND DATE: NA

LOCATION: NA

RESPONSES DUE PRIOR TO: March 10, 2020 2 PM CST

RESPONSE OPENING TIME AND DATE: March 10, 2020 3 PM CST

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET RM 308, AUSTIN, TEXAS 78701

LIVE SOLICITATION OPENING ONLINE: For RFQS'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:

Address for US Mail (Only)	**Address for FedEx, UPS, Hand Delivery or Courier Service**
City of Austin	City of Austin, Municipal Building
Purchasing Office-Response Enclosed for Solicitation # RFQS 5800 JSB4005	Purchasing Office-Response Enclosed for Solicitation # RFQS 5800 JSB4005
P.O. Box 1088	124 W 8th Street, Rm 310
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.

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

*****SIGNATURE FOR SUBMITTAL REQUIRED ON PAGE 3 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.

SECTION NO.	TITLE	PAGES
0100	STANDARD PURCHASE DEFINITIONS	4
0200 V2	STANDARD SOLICITATION INSTRUCTIONS, UPDATED JUNE 26, 2018	11
0300	STANDARD PURCHASE TERMS AND CONDITIONS, UPDATED JANUARY 2, 2020	15
0400	SUPPLEMENTAL PURCHASE PROVISIONS	4
0500	SCOPE OF WORK	3
0600	RESPONSE PREPARATION INSTRUCTIONS & EVALUATION FACTORS	3
0630	EXCEPTIONS - Complete and return	1
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
0900	SUBCONTRACTING/SUB-CONSULTING UTILIZATION FORM – Complete and return	1
0905	SUBCONTRACTING/SUB-CONSULTING UTILIZATION PLAN – Complete and return if applicable	3
ATTACHMENT 1	COMMERCIAL MARKET INFORMATION - Complete and return	1

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: _____

*** Qualifications Statement must be submitted with this signed Offer sheet to be considered for award**

CITY OF AUSTIN
PURCHASING OFFICE
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:

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.

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.

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.

CITY OF AUSTIN
PURCHASING OFFICE
SOLICITATION INSTRUCTIONS V2 JUNE 26, 2018

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 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.

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.

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.

(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.

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.

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;

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:

Address for US Mail (Only)	**Address for Fedex, UPS, Hand Delivery or Courier Service**
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 8th 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.

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

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;

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

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 (7th) 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.

CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS

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

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.

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

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.

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.

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 <u>at least</u> 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

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

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.

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.

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 2nd Street, 4th 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

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

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

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:

Holiday	Date Observed
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**

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

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.

CITY OF AUSTIN
PURCHASING OFFICE
SECTION 0400 - SUPPLEMENTAL PURCHASE PROVISIONS
SOLICITATION NO.: RFQS 5800 JSB4005

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 (via email) to the Purchasing Office to John.Besser@austintexas.gov by February 21, 2020 at 2:00 pm CST.

2. **ALTERNATE OFFERS:** (reference paragraph 7A in Section 0200)

   No alternate Offers will be considered.

3. **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

   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 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 $500,000 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.
  (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.

(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 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. **Professional Liability Insurance**:The Contractor shall provide coverage, at a mimimum limit of $5,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason on any negligent act, error, or omission arising out of the performance of professional services under this agreement.

If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state the the coverage is claims-made and indicate the retroactive date. The coverage shall be continuous and will be provided for 24 months following the completion of the contract.

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.

4. **TERM OF CONTRACT:**

A. The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of twelve (12) months. The Contract may be extended beyond the initial term for up to four (4) additional twelve (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.

5. **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:

	City of Austin
Department	Human Resources
Attn:	Risk Management - 5202
Address	PO Box 1088
City, State, Zip Code	Austin, Texas 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.

6. **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 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 and is also included in the Solicitation, Section 0200 V2, Solicitation Instructions June 26, 2018.

7. **OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests throughout the world in and to the Deliverables.

A. **Patents:** As to any patentable subject matter contained in the Deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

B. **Copyrights:** As to any Deliverable containing copyrighted subject matter, the Contractor agrees that upon their creation, such Deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such Deliverables, provided however, that nothing in this Paragraph 11 shall negate the City's sole or joint ownership of any such Deliverables

arising by virtue of the City's sole or joint authorship of such Deliverables. Should by operation of law, such Deliverables not be considered work made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of Austin) all worldwide right, title, and interest in and to such Deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such Deliverables to the City or at such other time as the City may request.

C. **Additional Assignments:** The Contractor further agrees to, and if applicable, cause each of its employees to execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns, and nominees, the sole and exclusive right, title, and interest in and to the Deliverables, The Contractor's obligations to execute acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 11 A., B., and C. shall continue after the termination of this Contract with respect to such Deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the Deliverables, but should arise to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph above.

8. **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:

City of Austin
Human Resources Department - Risk Management
Benny VandenAvond - Program Manager II,
Phone: 512-974-3264
Email: benny.vandenavond@austintexas.gov

*Note: The above listed Contract Manager is 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 Contract Manager is prohibited during the no contact period.

CITY OF AUSTIN
SCOPE OF WORK
FOR CYBER LIABILITY CONSULTING SERVICES
SOLICITATION NO. RFQS 5800 JSB4005

1. PURPOSE

The City of Austin, hereinafter referred to as the City, seeks qualification statements from insurance agents and brokers who are experienced and qualified to provide Cyber Liability consulting services and placement of comprehensive Cyber Liability insurance coverage for large public entity and municipal risks.

2. OBJECTIVE

The City is interested in reviewing qualification statements that outline the experience of the Contractor and key personnel with regard to data breach risks and Cyber Liability insurance solutions, as well as the types and amount of information required to obtain such coverage.

The successful Contractor shall have a minimum of five (5) years of experience in providing Cyber Liability insurance and consulting services for large public entities. The Contractor shall also have extensive experience with the carriers providing coverage in the Cyber Liability arena and shall be licensed to broker insurance in the State of Texas. **Responders shall not approach the insurance markets at this time.** Failure to comply with this request shall be grounds for immediate disqualification.

3. SCOPE OF SERVICES

The Contractor shall complete the following activities as specified for the City. The Contractor shall provide services including, but not limited to, the following:

3.1. Insurance Consulting

3.1.1. Identify laws and regulations that create and/or affect data security and breach liability and advise on existing and evolving laws and regulations that create or affect the City's liability.

3.1.2. Analyze tort liability laws and the Texas Tort Claims Act and provide a written assessment regarding whether or not the act provides any protection for the City's cyber-related operations.

3.1.3. Analyze and provide supporting data for the existence and feasibility of various risk management techniques to manage the City's data breach exposures and identify:

3.1.3.1. The data breach exposures that must be retained due to the non-existence of a risk transfer by commercial insurance option.
3.1.3.2. The data breach exposures that are insurable in the commercial market and which exposures represent high hazard, catastrophic exposures.
3.1.3.3. The data breach exposures that could or should be retained, the reasons why they could or should be retained, and the appropriate level of risk retention and transfer.
3.1.3.4. The loss avoidance or loss control measures that can be undertaken to control identified exposures.

3.1.4. Recommend the types of Cyber Liability insurance provisions that the City should procure given the City's specific exposures including appropriate retentions, sublimits and policy limits given the size and scope of the organization.

3.1.5. Provide a written project management plan to include a timeline, and actions and process steps to be taken for a successful assessment if the City decides to have a Cyber Evaluation and Risk Quantification assessment conducted.

3.1.6. Review the City's insurance requirement templates and provide recommendations for improvement. Create a list of commonly contracted services and commodities with data breach risks for which the City should include the recommended insurance language.

3.2. Develop and Market Cyber Liability Insurance

3.2.1. Research and assist in defining adequate, accurate and relevant underwriting information necessary to complete a comprehensive market submission package to carriers with expertise in writing Cyber Liability coverage.

3.2.2. Develop a marketing strategy and timeline for approval by the City. Identify for the City the most advantageous insurers to approach from the standpoint of cost, services, coverage and experience with municipal government and electric utility exposures.

3.2.3. Prepare a comprehensive market submission on behalf of the City. The prepared submission should serve the purpose of being considered an application for the purposes of receiving quotations and must meet with any procurement parameters the City provides.

3.2.4. Access the commercial insurance market in accordance with the approved marketing strategy and timeline to secure premium and coverage offerings from identified insurers.

3.2.5. Evaluate all submissions received. Prepare a selection criteria matrix to include underwriting provisions, costs, and criteria for each proposal received. Prepare a written policy verbiage analysis that delineates the provisions of the different policies being proposed. Provide your written recommendation of the top proposal received.

3.3. Negotiate, Bind, and Implement Insurance Program - Should the City receive approval to procure insurance coverage, the Contractor shall:

3.3.1. Negotiate final terms with selected insurance carrier, including, but not limited to collateral requirements, policy renewals, premium payment schedules, and claims reporting and handling protocols.

3.3.2. Bind coverage, secure binder, and maintain insurance policies and coverage without lapse as requested by the City and provide copies of Master policies and all endorsements to the City. The City shall not pay the premium until 30 days after receipt of an accurate and complete policy and an invoice detailing the premium due, including stamping fees and taxes.

3.3.3. Review policies to verify conformance with specifications and request all required coverage changes and ensure that all endorsements are issued accurately.

3.4. Other Services Provided by Contractor

3.4.1. Commit that the named principal and other key personnel responsible for the program will not be removed from the account without prior approval of the City. Replacement of key personnel is subject to approval by the City's Risk Manager.

3.4.2. Perform as an agent of the City, including issues related to confidentiality.

3.4.3. Handle claims in a timely manner and provide immediate response when catastrophic losses occur. Provide annual loss runs to the City that, at a minimum, specify the date of losses and provide a full description of the loss and the current paid and incurred status of each claim.

3.4.4. Store and maintain all paper records and documents associated with the insurance program throughout the duration of the program and for a period of five years after the final policy expiration date.

3.4.5. Assist the City with compliance with the Records Retention Act by maintaining records as outlined above and making all program files available to the City as requested for audit and other purposes.

3.4.6. Assist the City with general risk management and insurance best practices.

4. UNDERWRITING INFORMATION

4.1 Budget and Financial

4.1.1 Approved FY 2020 Budget — $4.2 Billion
4.1.2 Total Employees Approved (2018-19) — 14,449 Full Time Employee (FTE)

Additional information can be found at:
https://assets.austintexas.gov/budget/19-20/downloads/2020_Approved_Budget.pdf

4.2 Current Legal Status: The Texas Tort Claims Act limits the liability of a municipality to monetary damages in the amount of $250,000 for each person and $500,000 for each single occurrence for bodily injury and $100,000 for property damage per occurrence. The Act does not apply to the liability of a municipality for damages arising from its proprietary functions, which are those functions a municipality may, in its discretion, perform in the interest of the community. The operation of an electric utility is considered a proprietary function by the Act and the damage limits enjoyed by the municipality do not apply to the utility operations. The City code contains an ordinance that states that the City will use reasonable diligence to supply steady and continuous electric service but does not guarantee the service against irregularities or interruptions.

4.3 Liability Funding and Claims Information: The City established a self-funded insurance program and established the Liability Reserve Fund in 1984-85. The Liability Reserve Fund ("LRF") is the fund used to pay for actual claims incurred, reserves, and related expenses for settling third party liability claims for bodily injury and property damage, including professional liability claims against the City (including Austin Energy). The City Law Department employs two licensed claims adjusters and a division of litigation attorneys to handle liability claims against the City. Outside Counsel is employed occasionally to litigate cases as well.

4.4 Current Cyber Liability Coverage: The City currently purchases a stand-alone Cyber Liability Insurance coverage for Austin Energy. Austin Energy, which is owned and operated by the City, is the nation's 8th largest publicly owned electric utility. Austin Energy serves more than 448,000 customer accounts and more than 1,000,000 residents in Greater Austin. Operations include generation, transmission and distribution. Austin Energy operations are funded entirely through energy sales and services, and the utility operates within the Electric Reliability Council of Texas statewide market. Austin Energy further supports the City and its other departments through an annual transfer into the general fund of more than $100 million. Austin Energy oversees the Utility Customer Service Office which provides online payment services to Austin residents.

CITY OF AUSTIN
PURCHASING OFFICE
OFFER PREPARATION INSTRUCTIONS AND EVALUATION FACTORS
SOLICITATION NO. RFQS 5800 JSB4005

1. RESPONSE FORMAT

Submit one (1) print original of the Offer and one (1) flash drive that contain an exact electronic replica of the Offer in a .pdf format. The original Offer shall contain original ink signatures. Offers shall be typed on standard paper and have consecutively numbered pages. Offers and flash drive shall be organized in the following format and information sequence. Use tabs to divide each part of your Offer and include a Table of Contents. Offerors should provide all details in the Offer as required in the Section 0500 - Scope of Work and any additional information you deem necessary to evaluate your Offer. Failure to do so may result in your Offer being Non-Responsive

Tab 1 – Executive Summary: *Maximum of three pages*:
In no more than three pages, provide an Executive Summary in brief, concise terms of your qualifications related to this RFQS. Include the number of years your organization has been in business, a summary of your organization's history and experience, and how your organization is the most qualified to carry out the Scope of Work (reference Section 0500).

Tab 2 – City of Austin Purchasing Documents:
Complete and submit the following documents:

- **A.** Complete and signed Offer Sheet
- **B.** Signed Addendums (all pages), if applicable
- **C.** Complete Section 0630 Exceptions
- **D.** Completed and signed Section 0800 Non-Discrimination and Non-Retaliation Certification
- **E.** Completed and signed Section 0900 Subcontracting/Sub-Consulting Utilization Form
- **F.** Complete and return, if applicable, Section 0905 Subcontracting/Sub-Consulting Utilization Plan
  If you will be utilizing subcontractors, you must contact the Small and Minority Business Resources Department (SMBR) at 512-974-7600 to obtain a list of MBE/WBE firms available to perform the service and include the completed 0900 No Goals Utilization Plan with your Offer packet. Include 0900 No Goals Utilization Plan in Tab 2.
- **G.** Complete and return Attachment 1 - Commercial Market Information

Tab 3 – Authorized Negotiator: Include name, mailing address, email address, and telephone number of person in your organization authorized to negotiate contract terms and render binding decisions on contract matters

Tab 4 – Personnel Qualifications and Demonstrated Applicable Experience:

- **A.** State the full, legal name and address of your organization and identify your parent company if you are a subsidiary. Include your main businesses, number of offices and locations. Indicate whether you operate as a partnership, corporation, or individual. Include the state in which you are incorporated or licensed to operate.

- **B.** Specify the branch office or other subordinate element which will perform, or assist in performing, the Section 0500 Scope of Work. Provide details on the number of years in business, number of employees, and annual revenues volume.

- **C.** Provide a copy of your organization's most recent financial statement. If this is unavailable, submit sufficient information indicating the financial status of your organization.

- **D.** Submit evidence of your organization's experience in providing broker services for other entities with cyber liability exposures comparable to the City's. Preference will be given to organizations with applicable similar experience. Complete Attachment 1 - Commercial Market Information, listing insurance carriers that have provided Cyber Liability consulting and insurance coverages through your organization and account references the City may contact. Highlight services to public entities and municipalities. Failure to submit Attachment 1 with your Offer may deem your response non-responsive.

E. Identify the key personnel that will be directly responsible for working with the City and on the services described in the Section 0500 Scope of Work. Specify the exact roles and duties each of these people will provide, their specific experience providing services of a type and scope similar to the Section 0500 Scope of Work, and the number of years of employment with your organization. Include the resumes for all key personnel and applicable professional designations/licenses.

F. Describe the types of Cyber Evaluation and Risk Quantification assessments your organization has conducted within the past three years. Identify key contractors, if any, your organization engaged to assist in these assessments.

G. Based on your experience in the Commercial Cyber Liability Market, in no more than three pages, describe the key laws and regulations that create and/or affect data security and breach liability for Texas municipalities.

H. Based on your experience in the Commercial Cyber Liability Market, describe in detail the key cyber liability coverage provisions that currently exist in today's market that are most applicable to Public Entities/Municipalities. Identify which coverage provisions are typically written as a "sublimit" and how these sublimits relate (or not) to the total cyber liability policy limit.

2. OFFER ACCEPTANCE PERIOD: All Offers are valid for a period of one hundred and eighty (180) calendar days subsequent to the RFQS closing date unless a longer acceptance period is offered in the Offer.

3. PROPRIETARY INFORMATION: All material submitted to the City becomes public property and is subject to the Texas Open Records Act upon receipt. If a Respondent does not desire proprietary information in the response 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. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and made available upon public request.

4. EXCEPTIONS: Be advised that exceptions to any portion of the Solicitation may jeopardize acceptance of the Response. Exceptions you are requesting to the terms, conditions, and services described herein must be clearly identified on Section 0630 Exceptions.

5. OFFER PREPARATION COSTS: All costs directly or indirectly related to preparation of a response to the RFQS or any oral presentation required to supplement and/or clarify a Offer which may be required by the City shall be the sole responsibility of the Offeror.

6. COMPLIANCE: The Offeror agrees to compliance with terms of this RFQS and with all applicable rules and regulations of Federal, State, and Local governing entities.

7. NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYLING: On November 10, 2011, the Austin City Council adopted Ordinance No. 20111110-052 amending 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). During the No-Contact Period, respondents or potential respondents are prohibited from making a representation to anyone other than the Authorized Contact Person in the Solicitation as the contact for questions and comments regarding the Solicitation.

If during the No-Contact Period a respondent makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the respondent's offer is disqualified from further consideration except as permitted in the Ordinance.

If a respondent has been disqualified under this article more than two times in a sixty (60) month period, the Purchasing Officer shall debar the Offeror from doing business with the City for a period not to exceed three (3) years, provided the respondent is given written notice and a hearing in advance of the debarment.

The City requires respondents submitting Offers on this Solicitation to provide a signed Section 0810, Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit certifying that the respondent 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 The text of the City Ordinance is posted on the internet at:

http://www.ci.austin.tx.us/edims/document.cfm?id=161145

8. EVALUATION FACTORS AND AWARD

A. Competitive Selection: This procurement will comply with applicable City Policy. The most qualified Offeror will be selected by the City on a rational basis. Evaluation factors outlined in Paragraph B below shall be applied to all eligible, responsive Offerors in comparing responses and selecting the most qualified Offeror. Award of a Contract may be made without discussion with Offerors after submissions are received. Responses should, therefore, be submitted on the most favorable terms.

B. Evaluation Factors:

All Offers will be evaluated based on the following criteria and rankings. Maximum 100 points.

100 points **Personnel Qualifications and Demonstrated Applicable Experience (Tab 4.)**
The background and experience of the individuals who will be working directly with the City. The experience of the organization with providing cyber liability technical and other consulting services to large electric utilities, municipalities, and other large accounts; the organization's availability to large insurance markets specializing in these programs. Knowledge of and work on assessments.

Presentations, Demonstrations Optional. The City will score submissions on the basis of the criteria listed above. The City may select a "short list" of Offerors based on those scores. "Short-listed" Offerors may be invited for presentations or demonstrations with the City. The City reserves the right to re-score "shortlisted" submissions as a result, and to make award recommendations on that basis.

CITY OF AUSTIN
PURCHASING OFFICE
SECTION 0630 EXCEPTIONS

Solicitation Number: RFQS 5800 JSB4005

The City will presume that the Offeror is in agreement with all sections of the solicitation unless the Offeror takes specific exception as indicated below. Complete the exception information indicating each exception taken, provide alternative language, and justify the alternative language. Copies of this form may be utilized if additional pages are needed.

Failure to agree to the standard contract terms may result in the City choosing to move forward with an award of a contract to the next best Offeror.

The City, at its sole discretion, may negotiate exceptions that do not result in material deviations from the sections contained in the solicitation documents. Material deviations as determined by the City may result in the City deeming the Offer non-responsive. The Offeror that is awarded the contract shall be required to sign the contract with the provisions accepted or negotiated.

Indicate:

- ☐ **0300 Standard Purchase Terms & Conditions**
- ☐ **0400 Supplemental Purchase Provisions**
- ☐ **0500 Scope of Work**
- ☐ **Attachments (if applicable, indicate attachment # below)**

Attachment Number:

Page Number: **Section Number:** **Section Description:**

Alternative Language:

Justification:

Indicate below by checking the box, if no exceptions:

☐ **No Exceptions**

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 compliant, 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 filling. 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 _____

City of Austin, Texas
Section 0805
NON-SUSPENSION OR DEBARMENT CERTIFICATION
SOLICITATION NO.: RFP 8100 JSB3011

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. Covered transactions include procurement contracts for goods or services equal to or in excess of $25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of $25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

CITY OF AUSTIN, TEXAS
SECTION 0810 V2
NON-COLLUSION,
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION
June 26, 2018

The term **"Offeror"**, as used in this document, includes the individual or business entity submitting the Offer. For the purpose of this Affidavit, an Offeror includes the directors, officers, partners, managers, members, principals, owners, agents, representatives, employees, other parties in interest of the Offeror, and any person or any entity acting for or on behalf of the Offeror, including a subcontractor in connection with this Offer.

1. **Anti-Collusion Statement.** The Offeror has not in any way directly or indirectly:

   a. colluded, conspired, or agreed with any other person, firm, corporation, Offeror or potential Offeror to the amount of this Offer or the terms or conditions of this Offer.

   b. paid or agreed to pay any other person, firm, corporation Offeror or potential Offeror any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached Offer or the Offer of any other Offeror.

2. **Preparation of Solicitation and Contract Documents**. The Offeror has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Solicitation or Contract documents. In addition, the Offeror has not otherwise participated in the preparation or development of the underlying Solicitation or Contract documents, except to the extent of any comments or questions and responses in the solicitation process, which are available to all Offerors, so as to have an unfair advantage over other Offerors, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.

3. **Participation in Decision Making Process.** The Offeror has not participated in the evaluation of Offers or other decision making process for this Solicitation, and, if Offeror is awarded a Contract no individual, agent, representative, consultant, subcontractor, or sub-consultant associated with Offeror, who may have been involved in the evaluation or other decision making process for this Solicitation, will have any direct or indirect financial interest in the Contract, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.

4, **Present Knowledge.** Offeror is not presently aware of any potential or actual conflicts of interest regarding this Solicitation, which either enabled Offeror to obtain an advantage over other Offerors or would prevent Offeror from advancing the best interests of the City in the course of the performance of the Contract.

5. **City Code.** As provided in Sections 2-7-61 through 2-7-65 of the City Code, no individual with a substantial interest in Offeror is a City official or employee or is related to any City official or employee within the first or second degree of consanguinity or affinity.

6. **Chapter 176 Conflict of Interest Disclosure.** In accordance with Chapter 176 of the Texas Local Government Code, the Offeror:

   a. does not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income;

b. has not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than $100 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that City is considering doing business with the Offeror. and

c. does not have a family relationship with a local government officer of the City in the third degree of consanguinity or the second degree of affinity.

7. As required by 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 (7th) 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.

   If the Offeror cannot affirmatively swear and subscribe to the forgoing statements, the Offeror shall provide a detailed written explanation with any solicitation responses on separate pages to be annexed hereto.

8. **Anti-Lobbying Ordinance.** 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 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 and is also included in the Solicitation, Section 0200 V2, Solicitation Instructions June 26, 2018.

Section 0900: SUBCONTRACTING/SUB-CONSULTING UTILIZATION FORM

MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form

SOLICITATION NUMBER: RFQS JSB4005
SOLICITATION TITLE: Citywide Cyber Liability Insurance

In accordance with the City of Austin's Minority and Women-Owned Business Enterprises (M/WBE) Procurement Program (Program), Chapters 2-9A/B/C/D of the City Code and M/WBE Program Rules, this Solicitation was reviewed by the Small and Minority Business Resources Department (SMBR) to determine if M/WBE Subcontractor/Sub-Consultant ("Subcontractor") Goals could be applied. Due to insufficient subcontracting/subconsultant opportunities and/or insufficient availability of M/WBE certified firms, SMBR has assigned no subcontracting goals for this Solicitation. However, Offerors who choose to use Subcontractors must comply with the City's M/WBE Procurement Program as described below. Additionally, if the Contractor seeks to add Subcontractors after the Contract is awarded, the Program requirements shall apply to any Contract(s) resulting from this Solicitation.

Instructions:
a.) Offerors who do not intend to use Subcontractors shall check the "NO" box and follow the corresponding instructions.
b.)Offerors who intend to use Subcontractors shall check the applicable "YES" box and follow the instructions. **Offers that do not include the following required documents shall be deemed non-compliant or nonresponsive as applicable, and the Offeror's submission may not be considered for award.**

☐ **NO, I DO NOT intend to use Subcontractors/Sub-consultants.**
Instructions: Offerors that do not intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form) and include it with their sealed Offer.

☐ **YES, I DO intend to use Subcontractors /Sub-consultants.**
Instructions: Offerors that do intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form), and follow the additional Instructions in the (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan). Contact SMBR if there are any questions about submitting these forms.

Offeror Information			
Company Name			
City Vendor ID Code			
Physical Address			
City, State Zip			
Phone Number		Email Address	
Is the Offeror City of Austin M/WBE certified?	☐ NO ☐ YES Indicate one: ☐ MBE ☐ WBE ☐ MBE/WBE Joint Venture		

Offeror Certification: I understand that even though SMBR did not assign subcontract goals to this Solicitation, I will comply with the City's M/WBE Procurement Program if I intend to include Subcontractors in my Offer. I further agree that this completed **Subcontracting/Sub-Consulting Utilization Form,** and if applicable my completed **Subcontracting/Sub-Consulting Utilization Plan**, shall become a part of any Contract I may be awarded as the result of this Solicitation. Further, if I am awarded a Contract and I am not using Subcontractor(s) but later intend to add Subcontractor(s), before the Subcontractor(s) is hired or begins work, I will comply with the City's M/WBE Procurement Program and submit the **Request For Change** form to add any Subcontractor(s) to the Project Manager or the Contract Manager for prior authorization by the City and perform Good Faith Efforts (GFE), if applicable. I understand that, if a Subcontractor is not listed in my **Subcontracting/Sub-Consulting Utilization Plan,** it is a violation of the City's M/WBE Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begin work, unless I first obtain City approval of my **Request for Change** form. I understand that, if a Subcontractor is not listed in my **Subcontracting/Sub-Consulting Utilization Plan,** it is a violation of the City's M/WBE Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begin work, unless I first obtain City approval of my **Request for Change** form.

_____ _____

Name and Title of Authorized Representative (Print or Type) Signature/Date

Section 0905: SUBCONTRACTING/SUB-CONSULTING UTILIZATION PLAN

MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan

SOLICITATION NUMBER: RFQS JSB4005
SOLICITATION TITLE: Citywide Cyber Liability Insurance

INSTRUCTIONS: Offerors who DO intend to use Subcontractors may utilize M/WBE Subcontractor(s) or perform Good Faith efforts when retaining Non-certified Subcontractor(s). Offerors must determine which type of Subcontractor(s) they are anticipating to use (CERTIFIED OR NON-CERTIFIED), check the box of their applicable decision, and comply with the additional instructions associated with that particular selection.

☐ I intend to use City of Austin CERTIFIED M/WBE Subcontractor/Sub-consultant(s).

Instructions: Offerors may use Subcontractor(s) that ARE City of Austin certified M/WBE firms. Offerors shall contact SMBR (512-974-7600 or SMBRComplianceDocuments@austintexas.gov) to confirm if the Offeror's intended Subcontractor(s) are City of Austin certified M/WBE and if these firm(s) are certified to provide the goods and services the Offeror intends to subcontract. If the Offeror's Subcontractor(s) are current valid certified City of Austin M/WBE firms, the Offeror shall insert the name(s) of their Subcontractor(s) into the table below and must include the following documents in their sealed Offer:

- Subcontracting/Sub-Consulting Utilization Form (completed and signed)
- Subcontracting/Sub-Consulting Utilization Plan (completed)

☐ **I intend to use NON-CERTIFIED Subcontractor/Sub-Consultant(s) after performing Good Faith Efforts.**

Instructions: Offerors may use Subcontractors that ARE NOT City of Austin certified M/WBE firms ONLY after Offerors have first demonstrated Good Faith Efforts to provide subcontracting opportunities to City of Austin M/WBE firms.

STEP ONE: Contact SMBR for an availability list for the scope(s) of work you wish to subcontract;
STEP TWO: Perform Good Faith Efforts (Check List provided below);
STEP THREE: Offerors shall insert the name(s) of their certified or non-certified Subcontractor(s) into the table below and must include the following documents in their sealed Offer:

- Subcontracting/Sub-Consulting Utilization Form (completed and signed)
- Subcontracting/Sub-Consulting Utilization Plan (completed)
- All required documentation demonstrating the Offeror's performance of Good Faith Efforts (see Check List below)

GOOD FAITH EFFORTS CHECK LIST –

When using NON-CERTIFIED Subcontractor/Sub-consultants(s), **ALL of the following CHECK BOXES MUST be completed in order to meet and comply with the Good Faith Effort requirements and all documentation must be included in your sealed Offer. Documentation CANNOT be added or changed after submission of the bid.**

☐ **Contact SMBR.** Offerors shall contact SMBR (512-974-7600 or SMBRComplianceDocuments@austintexas.gov) to obtain a list of City of Austin certified M/WBE firms that are certified to provide the goods and services the Offeror intends to subcontract out. (Availability List). Offerors shall document their contact(s) with SMBR in the "SMBR Contact Information" table on the following page.

☐ **Contact M/WBE firms.** Offerors shall contact all of the M/WBE firms on the Availability List with a Significant Local Business Presence which is the Austin Metropolitan Statistical Area, to provide information on the proposed goods and services proposed to be subcontracted and give the Subcontractor the opportunity to respond on their interest to bid on the proposed scope of work. When making the contacts, Offerors shall use at least two (2) of the following communication methods: email, fax, US mail or phone. Offerors shall give the contacted M/WBE firms at least seven days to respond with their interest. Offerors shall document all evidence of their contact(s) including emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.

MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan

SOLICITATION NUMBER: RFQS JSB4005
SOLICITATION TITLE: Citywide Cyber Liability Insurance

☐ **Follow up with responding M/WBE firms.** Offeror shall follow up with all M/WBE firms that respond to the Offeror's request. Offerors shall provide written evidence of their contact(s): emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.

☐ **Advertise**. Offerors shall place an advertisement of the subcontracting opportunity in a local publication (i.e. newspaper, minority or women organizations, or electronic/social media). Offerors shall include a copy of their advertisement, including the name of the local publication and the date the advertisement was published.

☐ **Use a Community Organization.** Offerors shall solicit the services of a community organization(s); minority persons/women contractors'/trade group(s); local, state, and federal minority persons/women business assistance office(s); and other organizations to help solicit M/WBE firms. Offerors shall provide written evidence of their Proof of contact(s) include emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, organization contacted, phone number, email address and contact person.

MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan

SOLICITATION NUMBER: RFQS JSB4005
SOLICITATION TITLE: Citywide Cyber Liability Insurance

(Offerors may duplicate this page to add additional Subcontractors as needed)

Subcontractor/Sub-consultant	
City of Austin Certified	☐ MBE ☐ WBE Ethnic/Gender Code: ☐ NON-CERTIFIED
Company Name	
Vendor ID Code	
Contact Person	Phone Number:
Additional Contact Info	Fax Number: E-mail:
Amount of Subcontract	$
List commodity codes & description of services	
Justification for not utilizing a certified MBE/WBE	

Subcontractor/Sub-consultant	
City of Austin Certified	☐ MBE ☐ WBE Ethnic/Gender Code: ☐ NON-CERTIFIED
Company Name	
Vendor ID Code	
Contact Person	Phone Number:
Additional Contact Info	Fax Number: E-mail:
Amount of Subcontract	$
List commodity codes & description of services	
Justification for not utilizing a certified MBE/WBE	

SMBR Contact Information			
SMBR Contact Name	**Contact Date**	**Means of Contact**	**Reason for Contact**
		☐ Phone **OR** ☐ Email	

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

Having reviewed this plan, I acknowledge that the Offeror ☐ HAS or ☐ HAS NOT complied with these instructions and City Code Chapters 2-9A/B/C/D, as amended.

_____ _____

Reviewing Counselor Date

I have reviewed the completing the Subcontracting/Sub-Consultant Utilization Plan and ☐ Concur ☐ Do Not Concur with the Reviewing Counselor's recommendation.

_____ _____

Director/Assistant Director or Designee Date

ATTACHMENT 1 - COMMERCIAL MARKET INFORMATION

Provide the following information for your firm's current Cyber Liability Insurance Carrier Markets:

CARRIER NAME	CURRENT PREMIUM VOLUME FOR CYBER LIABILITY COVERAGE

List the 5 Largest United States based Public Entity/Municipality Account for Cyber Liability Insurance/Consulting that your firm currently works with:

ENTITY NAME	CONTACT NAME	PHONE #	START DATE	DESCRIPTION OF SERVICES PROVIDED

List the 3 Largest United States based Public Entity/Municipality Accounts for Cyber Liability Insurance/Consulting that your firm previously worked with within the last 5 years, but no longer provide Cyber Liability Insurance/Consulting services to:

ENTITY NAME	CONTACT NAME	PHONE #	START DATE	DESCRIPTION OF SERVICES PROVIDED