



SOLICITATION - Details

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1. INVITATION

IDENTIFICATION

Type	Invitation for Bids (IFB)
Number	IFB 9100 AAM1023
Title	HIV TEST KITS
Summary	The City of Austin, hereinafter referred to as “the City” seeks bids in response to this solicitation to establish a Contract with a qualified vendor, referred to as “Contractor” to provide Austin Public Health Program annual supply of one-time use, rapid Human Immunodeficiency Virus (HIV) Type 1 and Type 2 test kits.

CONTACTS

Primary Contact	Alejandro Arroyo; (512) 978-1989; alejandro.arroyo@austintexas.gov
Secondary Contact	Bridney Stewart, (512) 974-3127, Bridney.Stewart@austintexas.gov
Subcontractor Questions	Small Minority Business Resources Department; (512) 974-7600; SMBRComplianceDocuments@austintexas.gov
FSD Help Desk	Vendor Registration; (512) 974-2018; vendor@austintexas.gov
General Assistance	FSD Central Procurement (Front Desk); (512) 974-2500

DATES

Offers Due	Friday, July 17, 2026; 2:00 pm CT
Offers Opened	Friday, July 17, 2026; 3:00 pm CT
Questions Due	Friday, June 26, 2026; 5:00 pm CT
Solicitation Published	Monday, June 15, 2026

DOCUMENTS

Solicitation and Contract (Packet)	SOLICITATION - Solicitation Details (<i>this document</i>) SOLICITATION - Solicitation Instructions CONTRACT - Standard Terms and Conditions
Contract Attachments	ATTACHMENT - Insurance ATTACHMENT - Scope of Work



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- Offer Submittals*
- SUBMITTAL - Offer and Acceptance
 - SUBMITTAL - Prices and Pricing
 - SUBMITTAL - Wage Theft Prevention Employer Certification
 - SUBMITTAL - Subcontracting Plan
 - SUBMITTAL - Small Business Preference

CODES

NIGP 1934041



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1. SOLICITATION, CONTENTS

1.1. *Invitation for Bids*

The City of Austin invites all Responsible Offerors to submit Bids to provide the goods and/or services described in this Solicitation. This Invitation for Bids ("IFB" or "Solicitation") is composed of all documents identified in the Solicitation – Details, Documents section. The instructions included in this IFB describe the City's Competitive Sealed Bidding process. This process is compliant with the competitive sealed bidding processes prescribed by Texas Local Government Code Ch. 252, Ch. 271, as well as Texas Government Code Ch. 2269.

1.2. *Solicitation Contents*

This Solicitation is inclusive of all documents named and referenced in the Solicitation Details section.

1.3. *Review of Documents*

Offerors shall review the entire Solicitation, as revised. Offerors shall notify the applicable Contact Person(s) identified in the Solicitation – Details, Contacts section in writing of any omissions, ambiguities, inconsistencies or errors in the Solicitation prior to the Offers Due date and time displayed in the Solicitation – Details, Dates section. Offerors shall also notify the City of any Solicitation contents the Offeror believes may be unreasonably restrictive.

1.4. *Changes*

The City may change or revise any of the contents of this Solicitation through the issuance of a written Addendum. Any Addenda issued will be added to the Solicitation – Details, Documents section. The Version number displayed in the Solicitation Cover Sheet will indicate the number of Addenda issued. 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.

1.5. *Definitions*

Unless specifically defined elsewhere, terms used in this Solicitations are defined below.

"Addendum" means 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.

"Bid" means a complete, properly signed Offer submitted in response to this Solicitation, which if accepted, would bind the Offeror to perform the resultant Contract.

"City" means the City of Austin, a Texas home-rule municipal corporation.

"Competitive Sealed Bidding" means the competitive process described within an Invitation for Bids, wherein the City invites Offerors to submit bids to supply the City with the Goods and/or Service describes in the Solicitation document, where the City will award the resulting contract to the responsible Offeror submitting the low responsive bid.



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“Invitation for Bids (IFB)” means a complete packet of documents describing the City’s competitive sealed bidding process, including but not limited to Solicitation instructions, Standard and Special contract terms and conditions, and the submittals necessary for Offerors to respond to the Solicitation.

“Offer” means a complete signed response to a Solicitation including, but not limited to, an Invitation for Bids.

“Offeror” means a person, firm, or entity that submits an Offer in response to this 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.

“Price and Pricing Submittal” means a document, submitted by an Offeror in response to this Solicitation, containing unit and extended Bid prices for one or more of the Goods and/or Services identified by in the Prices and Pricing Submittal document.

“Financial Services Department - Central Procurement” refers to the line of business within the City of Austin’s Financial Services Department, responsible for the City’s procurement business function.

“Chief Procurement Officer” means the officer of the Financial Services Department – Central Procurement and the principal recipient of procurement authority from the City Manager.

“Responsible Offeror” means 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.

“Responsive” means meeting all the requirements of a Solicitation.

“Solicitation” means this Invitation for Bids or IFB.

“Wage Theft” means any action by an employer that secures performance of a service by agreeing to provide compensation for the service and, after the service is rendered, fails to make full payment.

2. PUBLICATION, NOTICES

2.1. Publication

This Solicitation was published on the City’s financial services website, Austin Finance Online, as of the Published date displayed in the Solicitation – Details, Dates section.

2.2. Email Notices

On the Solicitation’s Published date, email notices regarding this Solicitation were issued to all vendors registered in Austin Finance Online, that had previously selected the NIGP Codes displayed in the Solicitation – Details, Dates section. All subsequent email notices regarding this Solicitation will be limited to those vendors or other persons that subscribe to this Solicitation in Austin Finance Online.

2.3. Newspaper Notices

If applicable, one or more notices of this Solicitation were published in the newspaper as required by statute.



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2.4. *Third-Party Notices*

Austin Finance Online is the only source of official notices regarding this Solicitation. Prospective Offerors shall not rely on any notices concerning this Solicitation received from sources other than Austin Finance Online.

3. COMMUNICATION, MEETINGS

3.1. *Authorized Contacts*

The Solicitation may be subject to the City's Anti-Lobbying Ordinance. The names and contact information for the authorized contact persons for this Solicitation are displayed in the Solicitation – Details, Contacts section. Offerors needing assistance contacting an Authorized Contact Person regarding this Solicitation may also contact the Financial Services Department (FSD) – Central Procurement's main line. See Solicitation, Details, Contacts.

3.2. *Limits on Communication*

This Solicitation is subject to the City's Anti-Lobbying Ordinance (Austin City Code, sec. 2-7-101, et. seq., Austin City Ordinance no. 20180614-056, and applicable Administrative Rules), which limits communications between actual and prospective offerors (Respondents), their agents and other persons, with certain City employees and officials, during the Solicitation's No-Lobbying period. The No-Lobbying period for this Solicitation starts the date the Solicitation was published (see Solicitation Detail section) and continues through the earliest of the following: (i) the date the Solicitation is cancelled, (ii) the last of any resulting contract(s) are executed, or (iii) 60-days following Council authorization of the last contract resulting from this Solicitation.

3.3. *Questions*

Offerors shall submit any questions concerning this Solicitation in writing via e-mail to the authorized Contact Persons. See Solicitation Details, Contacts. The City will respond to all questions received by the Questions Due date and time displayed in the Solicitation – Details, Dates section. The City will publish one or more Addenda displaying all timely received questions and the City's responses to each for any information not already contained in the solicitation.

3.4. *FSD Help Desk, Vendor Registration*

For general questions concerning the City's online financial services system, Austin Finance Online, to register or respond to a Solicitation in the system, Offerors may contact the Financial Services Department (FSD) Help Desk. Assistance from the FSD Help Desk is limited to navigating and using Austin Finance Online system only. The FSD Help Desk will not respond to questions concerning a specific Solicitation.

3.5. *Pre-Offer Conferences*

The City may hold one or more Pre-Offer conferences to review the Solicitation and to receive verbal questions. The Solicitation – Details, Dates section will indicate if a Pre-Offer Meeting is being held and if attendance at this meeting is mandatory. If a Pre-Offer Conference is planned, the date, location, time, and any other necessary information regarding this meeting will also be displayed in the Solicitation – Details. Pre-Offer Conference attendance, as well as any relevant questions and responses, will be documented and will be



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included in an Addendum published following the Pre-Offer Conference. Offerors shall not rely on verbal exchanges that may occur at a Pre-Offer Conference.

3.6. Site Visits

The City may hold one or more site visits to allow prospective Offerors to inspect the location(s) where work under any resulting contract will be performed and to receive verbal questions. The Solicitation Cover Sheet will display if a Site Visit is being held and if attendance at this meeting is mandatory. If a Site Visit is planned, the date, location, time, and any other necessary information regarding this meeting will also be displayed in the Solicitation Cover Sheet. Attendance at any Site Visit will be recorded and will be included in an Addendum published following the meeting. As the Solicitation is subject to changes Offerors shall not rely on verbal exchanges that may occur at a Pre-Offer Conference. Offerors shall continue to submit all questions in writing. (See Solicitation Instructions, Questions.)

4. OFFER CONTENTS, PREPARATION

4.1. Offer Contents

Offerors intending to respond to this Solicitation shall download and complete each of the Submittal documents listed in the Solicitation – Details, Documents section. Submittal documents will include additional instructions specific to its contents. Offerors will complete each Submittal in accordance with the instructions in the submittal. At a minimum, submittals will include Prices and Pricing, and Offer and Acceptance submittals.

4.2. Alternate Offers

Unless excluded elsewhere in the Solicitation, Offerors may submit alternative Offers, in addition to their primary Offer. Offerors seeking to submit an alternative Offer may include with their completed Submittals, any alternative Submittals as applicable.

4.3. Exceptions

Offerors taking exceptions to any portions of the Solicitation in their Offer will cause the City to reject the Offer entirely.

4.4. Offer Acceptance Period

All Offers are valid for a period of one hundred fifty (150) calendar days subsequent to the Solicitation Due Date and Time.

4.5. Offer Costs, Participation

Offerors are responsible for all costs related to the preparation of their Offer and incurred while participating in this Solicitation process.



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5. OFFER SUBMISSION, OPENING

5.1. *Offer Submission, Online Only*

The City will not accept Offers submitted in hardcopy, or using any means, other than through the eResponse function, accessible in the Solicitation, as displayed in the City's online financial system, Austin Finance Online. To submit Offers using the eResponse function, Offeror's must first be registered as a Vendor in Austin Finance Online. For any questions or support using Austin Finance Online or eResponse, please contact FSD Help Desk. See Solicitation - Details, Contacts. See also System Instructions, "How to Submit Offers online using eResponse", (<https://assets.austintexas.gov/purchase/downloads/Submitting-Offers-in-AFO.pdf>)

5.2. *Due Date and Time for Offers*

Offers in response to this Solicitation shall be submitted via eResponse by the Offers Due date and time. See Solicitation - Details, Dates. The system time within Austin Finance Online shall be the official time of record for Offer submission.

5.3. *Withdrawing, Modifying, Resubmitting Offers*

Offers submitted online in response to this Solicitation may be withdrawn, revised, and resubmitted using the eResponse function any time prior to the Offers Due date and time. Withdrawn Offers may be resubmitted, with or without modifications, up to the Offers Due date and time.

5.4. *Late Offers*

The City will not receive, nor will Austin Finance Online will not allow, any Offers in response to this Solicitation submitted after the Offers Due date and time.

5.5. *Opening Electronic Offers*

The information regarding Electronic Offers will become available on or shortly after the Offer Opening Date and Time stated on the Solicitation Details. When Electronic Offers are opened, the names of each Offeror would be displayed within the Solicitation's eResponse section. For Solicitations conducted via Competitive Sealed Bidding, the Price Offer for each Offeror will also be displayed in the eResponse section.

6. BID EVALUATION, AWARD

6.1. *Minimum Responsiveness*

Bids are minimally responsive when they include all the Submittals stated in the Solicitation, completed and with sufficient detail in each to evaluate the Bid in accordance with the Solicitation's Instructions. Bids that are not minimally responsive will be rejected.

6.2. *Bases of Competition*

The City may compare Bids by line items, groups of line items (categories) or aggregately for all line items, in determining the basis of competition that best meets the City's needs for the resulting contract(s).



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6.3. *Best Value Competition, Small*

Once the City determines the basis or bases of competition, the City will evaluate the bids based on best value to the City, including consideration of offerors' size (Small Businesses). In conducting best value competition, the City will discount the bids submitted by Small Businesses based on their aggregate value: Up to \$500,000, will be discounted Five Percent (5%); Between \$500,000 and \$50 million, will be discounted Three Percent (3%). After any discount has been applied, the City will sort the bids by price to determine low bid representing best value to the City. Any discount applied is for purposes of the competition only and will not apply to any resulting contract(s).

See **SUBMITTAL – Small Business Preference**.

6.4. *Clarifications*

Any time after the Offers Due date and time, and the opening of Bids, the City may contact Offerors to ask questions about their Bid's contents in order to better understand these contents as written. Responses to clarification questions, whether done verbally or submitted in writing, do not change the Bid's contents.

6.5. *Responsiveness*

Once the low bid, or best value bid, is identified the City will evaluate the bid for responsiveness with all Solicitation requirements. A bid is responsive if it complies with all Solicitation Instructions, scope, and specifications. If a bid is found to be nonresponsive, the City will set it aside and proceed with evaluating the next lowest bid, or next best value bid, for responsiveness.

6.6. *Responsibility*

Once the low responsive bid, or best value responsive bid, is determined, the City will evaluate the Offeror for responsibility. An Offeror is responsible if they have the financial and practical ability, resources, expertise, past performance, and positive compliance history with all City ordinances. If an Offeror is found to be non-responsible, the City will set their bid aside and proceed with evaluating the responsibility of the Offeror submitting the next low responsive bid, or best value responsive bid.

6.7. *Award*

The City will award the contract to the responsible Offeror(s) submitting the low responsive bid, or best value responsive bid, as applicable. If the City determines that multiple contracts are needed, the City will award one or more additional contracts to the responsible Offerors submitting the next lowest responsive bids, or next best value responsive bids. The City will publish the award determination to the Solicitation's attachments in Austin Finance Online, and automatically notify all parties that subscribed to the Solicitation of the award determination's availability therein.

7. **ADMINISTRATIVE MATTERS**

7.1. *Contract Authorization, Execution*

Contracts within the City Manager's authority will be awarded and executed simultaneously. Contracts above the City Manager's authority will be executed following their authorization by the Austin City Council.



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7.2. Solicitation File

All documents included in this Solicitation, and all timely received Offers in response to this Solicitation, except for Offer contents deemed by Offerors to be proprietary and confidential, will be available for public inspections upon the publication of the City's recommendation of award. The recommendation of award will be posted in Austin Finance Online.

7.3. Debriefings

Offerors may request a debriefing meeting to ask any questions concerning the Solicitation's contents, process, or the evaluation of their Offer. Debriefing meetings are informal exchanges and may be requested anytime following the earlier of (i) after the contract resulting from this Solicitation is executed, or in the case of multiple awards, the last contract is executed; (ii) the date the Solicitation is cancelled. Debriefings are not public called meetings in accordance with the Texas Open Meetings Act and are usually limited to a single Offeror and any of their representatives. Only information regarding the Solicitation documents and the Offeror's Offer in response to the Solicitation will be discussed.

7.4. Protests

The Chief Procurement 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 Chief Procurement Officer may dismiss your complaint or protest.

- A. Protest regarding the Solicitation (Pre-Bid Protest). Any protest regarding the Solicitation by the City shall be filed no later than five (5) business days before the opening of Bids. Any protest filed after that date which raises issues regarding the Solicitation will not be considered.
- B. Protests regarding the evaluation of Bids. Any protest regarding the evaluation of Bids by the City shall be filed with the City no later than five (5) business days after the opening of Bids, or notification that the protestor's status as an Offeror has changed, such as notification that a Bid has been rejected. Any protest filed after such date which raises issues regarding the evaluation will not be considered.
- C. Protest Regarding Award of Contract (Post-Award Protest). Any protest regarding the award of the contract shall be filed no later than ten (10) business days after the date of award. Any protest regarding the award of the contract filed after such date will not be considered.
- D. You shall submit your protest in writing and it shall include the following information: (i) your name, address, telephone, and email address; (ii) the Solicitation number; (iii) the specific facts and/or law upon which the protest of the Solicitation or the award is based, including all pertinent documents and evidence thereto; and (iv) the form of relief requested.
- E. Your protest shall be concise and presented logically and factually to help with the City's review.
- F. When the City receives a timely written protest, the Chief Procurement Officer will determine whether the grounds for your protest are sufficient. If the Chief Procurement Officer decides that the grounds are sufficient, the Chief Procurement Officer will schedule a protest hearing, usually within five (5)



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business days. If the Chief Procurement Officer determines that your grounds are insufficient, the City will notify you of that decision in writing.

- G. 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 Solicitation, the Department of Law, the Financial Services Department – Central Procurement, 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.
- H. A decision will usually be made within fifteen (15) calendar days after the hearing.
- I. The City will send you a copy of the hearing decision after the appropriate City staff has reviewed the decision.
- J. 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 Chief Procurement Officer determines that the City urgently requires the supplies or Services to be purchased, or 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.

7.5. Reservations

The City reserves the right to: (i) cancel this Solicitation at any time for any reason and to resolicit the goods and services included in this Solicitation; (ii) specify approximate quantities in the Solicitation; (iii) extend the Solicitation due date and time; (iv) add additional terms or modify existing terms in the Solicitation; (v) reject an Offer containing exceptions, additions, qualifications or conditions not called for in the Solicitation; (vi) reject an Offer received from an Offeror who is currently debarred or suspended by the City, State, or Federal Government; (vii) reject an Offer that contains fraudulent information; (viii) reject an Offer that has material omissions; (ix) reject any or all Offers; (x) procure any goods or services included in this Solicitation by other means; (xi) consider and accept alternate Offers, if specified in the Solicitation, when most advantageous to the City; (xii) reject an Offer if prices in the Offer are unbalanced (some prices are significantly high and other prices are significantly low) and/or (xiii) waive any minor informality in any Offer or procedure so long as the deviation does not affect the competitiveness of the Solicitation process.

7.6. 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



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interest between the Offerors and local officials remain in place. Link to Texas Ethics Commission Form 1295 process and procedures below: <https://ethics.state.tx.us/filinginfo/1295/>.



CONTRACT - Standard Terms and Conditions

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1. GENERAL

1.1. *Parties, Offer and Acceptance*

The parties to this Contract include the City of Austin, Texas (City) and the Contractor set forth in the referenced submittal.

See **SUBMITTAL - Offer and Acceptance**

1.2. *Interpretation*

This 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.

1.3. *Indefinite Quantities*

Quantities of goods and/or services to be provided under this contract are indefinite and are included as estimates only. The City reserves the right to purchase more or less of these quantities during the Contract's term. The City will specify the quantities of goods and/or services required within each order issued under this contract.

1.4. *Notices, Contacts*

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 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. Notices to the Contractor shall be sent to the address registered with the City. Notices to the City shall be addressed to: City of Austin, Financial Services Department-Central Procurement, 505 Barton Springs Road, Ste 330, Austin, TX 78704 and marked to the attention of the assigned Procurement Specialist.

1.5. *Contract Term, Multi-Year, Optional Extensions*

- A. The Contract shall commence upon execution unless otherwise specified and shall continue in effect until all obligations are performed in accordance with the Contract. Upon written notice to the Contractor, and unless specified otherwise in the Scope of Work, the Contract may be extended beyond the initial term at the City's sole option. If the City does not provide this notice, the Contract will expire at the end of its current term. 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.



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- B. Upon expiration of the initial term or any period of extension, the Contractor agrees to holdover under the terms and conditions of this Contract for such a period as is reasonably necessary for the City to re-solicit and/or complete the Deliverables due under this Contract. Any holdover period will not exceed 180 calendar days unless mutually agreed on by both parties in writing.

1.6. Cooperative Use, Not Allowable

Cooperative use of this Contract by other governments is not allowed.

1.7. Assignments, Delegations

The Contract shall be binding upon and ensure 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.

1.8. Modifications

The Contract can be modified or amended only in writing and signed by both parties. No pre-printed or similar terms on any Contractor Invoice, Order, clickwrap agreement or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

1.9. Holidays

Dates for the holidays observed by the City can be found here <https://www.austintexas.gov/departments/official-city-holidays>

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.

1.10. Definitions

"Affiliate" – including but not limited to, (i) Contractor's parent, subsidiaries, sister companies, partnerships, joint ventures, franchisees, assigns, business partners, contractors, subcontractors and consultants, controlling, controlled by or under common control of Contractor as they may change from time to time and (ii) Users, as they may change from time to time.

"Amendment" – a written document executed by both Parties that modifies the terms of this Contract, including referenced attachments.

"Authorized Persons" – the Contractor personnel (including subcontractor personnel) located in the contiguous United States having successfully completed the required background check and related requirements of the Contract.

"Change Order Request" – the written document provided by the City to Contractor requesting changes to Contractor's obligations under this Contract.

"Change Order Response" – the written document provided to the City by Contractor in response to City's Change Order Request.



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"City Confidential Information" – (a) information provided by the City that is marked or identified as confidential, (b) information, including software, computer programs, documentation, processes, procedures, techniques, technical, financial, customer, personnel and other business information of a non-public nature that would reasonably be understood to be confidential whether or not marked or identified as confidential, (c) information generated by Contractor (or subcontractor) that contains, reflects, or is derived from Confidential Information, (d) Personal Identifying Information, (e) Restricted Data, and (f) all other information made confidential by federal, state or local law or regulation. City Confidential Information is part of City Data.

"City Data" – data or information (in any form) regarding the City or its customers that is created, collected, provided, obtained, or otherwise made available in connection with this Contract to an Authorized Person.

"City Identified Contact" – the person or persons designated in writing by the City to receive security incident notifications.

"City" – the City of Austin, Texas, a municipal corporation and subdivision of the State of Texas, or a department of same.

"Cloud Service" – any Service made available to Users via the Internet from a provider's servers as opposed to being provided from the City's own on-premises servers. In this instance, it would mean such Services provided by the Contractor.

"Confidential Information" – all written or oral information, which may be disclosed by either Party to the other, related to the business operations of either Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential; "City Confidential Information" is a subsets of Confidential Information.

"Contract" – the final general authorizing document (including Change Orders thereto) utilized by the City to procure Services from Contractor and any attachments and appendices attached thereto.

"Contract Price" – the total amount to be paid to Contractor under any Purchase Order as it may be adjusted or changed in accordance with the terms of the final Contract.

"Contractor" – the contractor and its employees, subcontractors, agents and affiliates who are providing the services agreed to under the contract.

"Contractor Information" – all techniques, algorithms and methods or rights thereto owned by or licensed to Contractor during the term of this Contract and employed by Contractors in connection with the Services provided to City.

"Contractor Software" – software that was developed or licensed to Contractor independent of this Contract and which Contractor utilizes to provide the Subscription Services or the Non-subscription Services.

"Data Breach" – the unauthorized access by a non-authorized person(s) that results in the use, disclosure or theft of City's or City's customers' unencrypted Personally Identifiable Information or City Confidential Information.

"Documentation" – the documentation created by the Contractor for the Services provided but does not include customized documentation prepared under the Contract and which are Deliverables under the Contract, including the Statement of Work; such Deliverables are wholly owned by City and Contractor shall make no claim to such Deliverables.



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“Facility” – the City designated facility or location set forth in the Purchase Order where Services are to be performed by Contractor or Supplier or software installed.

“FACTA” – the Fair and Accurate Credit Transactions Act, 15 U.S.C. §§ 1681-1681x.

“Final Acceptance Date” – the date upon which the City confirms that all Services and Work Products have been completed and tested and function in accordance with the terms of the Contract.

“IaaS Subscription Schedule” – the document, part of the Contract, executed by both Parties that sets out the Parties’ rights and obligations with respect to City’s access to and use of the IaaS services.

“Infrastructure-as-a-Service” (IaaS) – the capability provided to the consumer to provision processing, storage, networks and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed applications and possibly limited control of select networking components (e.g., host firewalls).

“Non-Public Data” – data typically considered internal and used for city business or mission needs. All information is considered Non-Public unless otherwise classified or explicitly defined through the Information Governance Program or official policy or procedural documents.

“Public Data” means data typically created for public release or released to the public through management decision and/or a public information request.

“Restricted Data” means data typically exempt from public disclosure requirements under the provisions of applicable state or federal law. Examples of restricted information are regulated and confidential data.

“Non-Subscription Services” – the Services provided to City by Contractor under this Contract that are not included in the definition of Subscription Services. Non-subscription Services shall include, but not be limited to, consulting, implementation, customization and other services provided to City by Contractor under this Contract, together with all documentation provided by or otherwise required of Contractor for any of the consulting, implementation, customization or other Services it provides.

“PaaS Subscription Schedule” – the document, part of the Contract, executed by both Parties that sets out the Parties’ rights and obligations with respect to City’s access to and use of the PaaS services.

“Party” or “Parties” – the City and Contractor, individually or together, as applicable.

“Personally Identifiable Information” – information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. PII includes, but is not limited to, personal information and/or personal data. Some forms of PII are considered Restricted Data and require additional protection, including, but not limited to, Sensitive Personal Information (SPI), Sensitive and/or Protected PII, and Protected Health Information (PHI).

“Platform-as-a-Service” (PaaS) – the capability provided to the City to deploy onto the cloud infrastructure consumer-created or -acquired applications created using programming languages and tools supported by the provider. This capability does not necessarily preclude the use of compatible programming languages, libraries, services and tools from other sources. The consumer does not manage or control the underlying cloud infrastructure, including network, servers, operating systems or storage, but has control over the deployed applications and possibly application hosting environment configurations.



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"Purchase Order" – the general authorizing document (including Change Orders thereto) utilized by the City to procure Services from Contractor under this Contract and any attachments and appendices attached thereto.

"SaaS Software Application" and **"SaaS Software"** – the computer software listed on a SaaS Subscription Schedule to which Contractor has granted City access and use as part of the Subscription Services. This includes any customization, other derivative works, upgrades, releases, fixes, patches, etc. related to the software that Contractor develops or deploys during the term of this Contract, together with all documentation provided by or otherwise required of Contractor for any of the software, customization, other derivative works, upgrades, releases, fixes, patches, etc.

"SaaS Subscription Schedule" – the document, part of the Contract, executed by both Parties that sets out the Parties' rights and obligations with respect to City's access to and use of the SaaS Software Application.

"Security Incident" – any actual or potential unauthorized disclosure of, or unauthorized access to, City Confidential Information; or a violation or imminent threat of violation of computer security policies, acceptable use policies, or violation or imminent threat of violation of industry standard security practices.

"Service Level Agreement" (SLA) – a written agreement between both the City and the Contractor that is subject to the terms and conditions of the Contract that, unless otherwise agreed, includes (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, (5) how disputes are discovered and addressed, and (6) any remedies for performance failures by or otherwise required of Contractor for any of the software, customization, other derivative works, upgrades, releases, fixes, patches, etc.

"Service Levels" – the performance specifications for work performed by the Contractor under a SaaS Subscription Schedule or Statement of Work.

"Services" – work, direction of work, installation services, technical information, technical consulting, software programming and development, software maintenance and support services, or other professional and technical services furnished by Contractor as described in detail in the final Contract.

"Software" – the computer programs in source code, object code or binary form or in any other form, including any related or included computer programs, whether owned by Licensor or licensed to Licensor by a third party which has authorized Licensor to sublicense such computer programs, and including any documentation or related materials concerning the application, use, training of users, theory of operation, maintenance or any other aspect of the Software.

"Software-as-a-Service" (SaaS) – the Services provided to the City to use the Contractor's offering running on non-City owned infrastructure. The User does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

"Specifications" – those technical specifications attached to the Contract and to which the Services and Work Products supplied by Contractor must conform.

"Statement/Scope of Work" – a written statement of Deliverables including Services and, ultimately, the Contract, which describes the City's Service needs and expectations.



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"Subscription Services" – City's access to and use of and Contractor's provision of the SaaS Software Applications and other Services listed on a SaaS Subscription Schedule and in accordance with the terms and conditions set forth in the SaaS Subscription Schedule and Contract documents, as appropriate.

"Third Party" – any natural person or legal entity other than Contractor and City.

"Transition Date" – the date upon which it is established to City's satisfaction that the SaaS Software Application is stable enough to support City's production processing.

"User Information" – all information directly or indirectly obtained from Users accessing the SaaS Software Applications where such information is obtained by Contractor or by any of its employees, representatives, agents or any Third Parties having contractual privity with Contractor or who are under Contractor's supervision or control.

"User" – City's employees, agents, consultants, outsourcing companies, contractors and others who are authorized by City to access and use the SaaS Software Applications and any part or portion of the Subscription Services or non-Subscription Services in the performance of their duties for City.

"Work Product" – all deliverables and other materials, products or modifications developed or prepared for City by Contractor under this Contract, including without limitation, any integration software or other software, all data, program images and text viewable on the Internet, any HTML code relating thereto, or any program code, including program code created, developed or prepared by Contractor under or in support of the performance of its obligations under this Contract, including manuals, training materials and documentation, but excluding the Contractor's Software.

2. CONTRACTOR PERSONNEL, SUBCONTRACTORS

2.1. Subcontracts, No MBE-WBE Goals

The City's Minority-Owned and Women-Owned Business Enterprise (MBE-WBE) Program does not apply to this Contract. If the Contractor elects to use one or more Subcontractors in the performance of work under this Contract, prior to using any such Subcontractors, the Contractor must complete the referenced submittal, and submit it for approval by the City.

- A. If the Contractor identified Subcontractors in a Subcontractor Plan the Contractor shall comply with the provisions of Chapters 2-9A and 2-9B, as applicable, of the Austin City Code and the terms of the Subcontractor 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 and 2-9B, 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 no later than the 10th calendar day of each month.



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- 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
1. Require that all Deliverables and services to be provided by the Subcontractor be provided in strict accordance with the provisions, Specifications and terms of the Contract;
 2. 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;
 3. 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;
 4. 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
 5. Require that the Subcontractor follow terms as defined in section, AUDITS AND RECORDS and City Code Chapter 2-11
- 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 10 calendar days after receipt of payment from the City.

See **SUBMITTAL - Subcontracting Plan, No MBE-WBE Goals**

2.2. Non-Solicitation

During the term of the Contract, and for a period of 6 months following termination of the Contract, the Contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City Department that engages or uses the services of a Contractor employee.

If a breach of Paragraph A occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one year of the employee's annual compensation; or (ii) ONE HUNDRED PERCENT (100%)



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of the employee's annual compensation while employed by the City. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision.

During the term of the Contract, and for a period of six months following termination of the Contract, a Department that engages the services of the Contractor or uses the services of a Contractor employee will not hire a Contractor employee while the employee is performing work under a Contract with the City unless the City first obtains the Contractor's approval.

Notwithstanding the foregoing, this provision shall be waived in the event an employee initiates an unsolicited action based on public advertisements in newspapers, trade publications, or electronic job boards.

2.3. Security Clearance and Badging

- A. Access to the NO VALUE Department building by the Contractor, all Subcontractors and their employees will be strictly controlled, at all times, by the City. Security badges will be issued by the Department for this purpose. The Contractor shall submit a complete list of all persons requiring access to the NO VALUE building at least 30 days in advance of their need for access. The City reserves the right to deny a security badge to any Contractor personnel for reasonable cause. The City will notify the Contractor of any such denial no more than 20 days after receipt of the Contractor's submittal.
- B. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the Contract, the Contractor shall so notify the City's Contract Manager, in writing, within 10 days of the receipt of notification of denial.
- C. Contractor personnel will be required to check in at the security desk when entering or leaving the NO VALUE building and security badges must be on display, at all times, when in the building. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule. Security badges may not be removed from the premises.
- D. The Contractor shall provide the City's Contract Manager with a list of personnel scheduled to enter the building, seven days in advance. The list shall identify the persons by name, date of birth, driver's license number, the times that they will be inside the building and the areas where they will be working. Only persons previously approved by the City for the issuance of security badges will be admitted to the building.
- E. The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees and Subcontractors are kept fully informed as to these requirements.

3. COMPENSATION, FEES, REIMBURSEMENTS

3.1. Fixed Prices, Economic Price Adjustments

- A. **Fixed Price.** Contract is fixed price, unit price(s). Contractor shall only charge, and the City shall only recognize those price(s) set forth in the contract, in effect at the time a contract order is issued. **See SUBMITTAL – Prices and Pricing**



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- B. **Price Adjustments.** Prices shown in this Contract shall remain firm for the first 12 of calendar months of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the Contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the Solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed 25 percent for any single line item and in no event shall the total amount of the Contract be automatically adjusted as a result of the change in one or more-line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.
- C. **Effective Date.** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of Contract award and remain in effect until Contract expiration unless changed by subsequent amendment.
- D. **Adjustments.** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.
- E. **Index.** In most cases an index from the Bureau of Labor Standards will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.
- F. **Definitions.** The following definitions apply:
Base Period: Month and year of the original Contracted price (the Solicitation close date).
Base Price: Initial price quoted, proposed and/or Contracted per unit of measure.
Adjusted Price: Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
Change Factor: The multiplier utilized to adjust the Base Price to the Adjusted Price.
Weight %: The percent of the Base Price subject to adjustment based on an index change.
- G. **Adjustment-Request Review.** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable utilize final Compilation data instead of Preliminary data. If the referenced index is no longer available shift up to the next higher category index. Complete the following Index Identification.
Weight % or \$ of Base Price: 100%
Database Name: Producer Price Index - Industry Data.
Series ID: PCU33911-33911-
Seasonally or Not Seasonally Adjusted: Not Seasonally Adjusted.



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Geographical Area: United States (National).

Description of Series ID: PPI industry data for Medical equipment & supplies mfg.

This Index shall apply to the following items of the Bid Sheet / Cost Proposal: All.

H. **Single Index Method:** Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation: _____

Divided by index on Solicitation close date: _____

Equals Change Factor: _____

Multiplied by the Base Rate: _____

Equals the Adjusted Price: _____

3.2. Published Price List

The Published Price List may be superseded or replaced during the Contract term only if price revisions are the result of a modification to the manufacturer's official Published Price List. Written notification from the Contractor of price changes, along with one copy of the revised manufacturer's official Published Price List must be submitted to Central Procurement with the effective date of change to be at least 30 calendar days after written notification. The City reserves the right to refuse any list revision. The discounts or markups on equipment rental, material, supplies, parts, and Contract services shall be fixed throughout the term of the Contract and are not subject to increase. Failure to submit written notification of Published Price List revisions will result in the rejection of new prices being Invoiced. The City will only pay Invoices according to the last approved price list.

3.3. Restocking Fees

The Contractor may bill the City restocking fees (if specifically authorized by this Contract) for parts that are Ordered by the City under the Contract and returned for refund. The Contractor is not obligated to accept for refund any part that is not resalable and/or not in the same condition as when purchased. Restocking fees may be charged to the City when multiple parts or groups of parts are returned for refund at one time due to the City inventory warehouse cleaning, unless these parts are returned at an annual pre-arranged date. The date for the annual return shall be mutually agreed upon between the City and the Contractor.

3.4. Non-Specified Items

The City may purchase additional related items that are available from the Contractor. Pricing for these non-specified items will be calculated based on a percentage markup over Contractor's cost, percentage discount of list price or as otherwise identified in the Price Sheet under the Non-Specified Items Section. The percentage markup or discount shall be fixed throughout the term of the Contract and are not subject to increase. They shall also remain firm through subsequent Contract extension options. The City may request additional information from the Contractor to substantiate the percentage markup or discount prior to placing an order.



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4. ORDERS, DELIVERY, INVOICES, PAYMENTS

4.1. *Delivery and Packaging Terms*

- A. **Delivery and Transportation Charges.** Deliverables shall be shipped F.O.B. destination, prepaid and allowed unless otherwise specified. Unless otherwise stated in this Contract, the Contractor's price shall be deemed to include all delivery and transportation charges of required mode of transportation. 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 set forth in the block of the Purchase Order or Delivery Order entitled "SHIP TO" and/or Offer Sheet. Unless requested by the City, deliveries shall not be made on City-recognized legal holidays. The City expressly reserves all rights under law, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables.
- B. **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. However, the Contractor shall have the right to substitute a conforming tender; provided if the time for performance has not yet expired. The Contractor shall notify the City of the intention to cure and may then make a conforming tender within the time allotted in the Contract.
- C. **Acceptance of Incomplete or Non-Conforming Deliverables.** All Deliverables must be shipped complete unless arrangements for partial shipments are made in advance. 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 or Services. 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 or Services. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor within 30 calendar days of notification provided by the City.
- D. **Right of Inspection and Rejection.** The City expressly reserves all rights under law to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables.
- E. **Contractor Packaging 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, 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 Delivery Order 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 the cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common



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carriers and any applicable Specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

4.2. *Ownership and Use of Deliverables*

The City shall own all rights, titles, and interests throughout the world in and to the Deliverables, except as stated below.

- 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 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 Clause 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



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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.

- D. **Hazardous Materials.** If this Contract involves hazardous materials, the Contractor shall provide the City the Safety Data Sheets (SDS) on all chemicals and hazardous materials being used, specifying the generic and trade name of product, product specification, and full hazard information including receiving and storage hazards. Instructions, special equipment needed for handling, information on approved containers, and instructions for the disposal of the material are also required. Failure to submit the SDS is grounds for the City to terminate this Contract immediately. The SDS, instructions and information required in Paragraph "A" must be included with each shipment under the Contract.
- E. **Special Tools and Testing 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.

4.3. Acceptance of Incomplete or Non-Conforming Deliverables and/or Services

If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables or Services, 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 or Services. 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 or Services. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor within 30 calendar days of notification provided by the City.

4.4. Invoices

- A. The Contractor shall submit separate Invoices for each Order after each delivery or on the schedule provided in the Contract. If partial shipments or deliveries are authorized by the City, a separate Invoice must be sent for each shipment or delivery made.
- B. Invoices shall be sent to the address on the Purchase Order or Delivery Order in the section entitled, "BILL TO". Proper Invoices must include a unique Invoice number, the purchase Order or delivery Order number, 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 according to pricing structure in the Contract. 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. Invoices received without all required information cannot be processed and will be returned to the vendor.



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- C. Invoices for labor shall 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.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontracting 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.

4.5. Payments

- A. All proper Invoices received by the City will be paid within 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 §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 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 under the terms of this Contract, are filed or there is 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 demonstrates 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, §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. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer for all goods and/or services provided under the Contract. The Contractor shall factor the cost of



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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.

- 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 inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City. 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 notice of non-appropriation.

4.6. Final Payment, Close Out

- A. If a Minority-Owned Business Enterprise/Women-Owned Business Enterprise (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 waiver of all claims by the City against the Contractor, except claims (i) which have been previously asserted in writing and not yet settled, (ii) arising from defective work appearing after final inspection, (iii) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (iv) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (v) arising under the City's right to audit; and waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

4.7. Buy America Act

In accordance with applicable Federal Regulations, the City is restricted from using Federal funds for purchasing supplies that are not domestic end products, for use within the United States. Offerors shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the Buy American Act Certificate.



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5. WARRANTIES, GUARANTEES

5.1. *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.

5.2. *Warranty*

- A. **Price.** (i) 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. (ii) The Contractor warrants that its prices provided in this Contract are no higher than its current prices on orders for similar goods under similar terms of purchase.
- B. **Title and 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. 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.
- C. **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 Contract, the Deliverables shall be new or recycled merchandise, and not used or reconditioned. (i) 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. (ii) 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 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. (iii) 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



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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. (iv) 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 fully assist and cooperate with the City to enforce such manufacturer's warranty for the benefit of the City. (v) Contractor warrants that all Equipment shall be at current engineering change levels and shall be eligible for the manufacturer's standard prime shift maintenance contract upon delivery.

5.3. *Warranty by Contractor Against Infringements*

- A. 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.
- B. 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.
- C. 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.

6. **RISK, INDEMNIFICATION, INSURANCE**

6.1. *Force Majeure*

Contractor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, pandemic, sovereign conduct, or court order provided that the Contractor experiences the event of force majeure and prudently and promptly acts to take any and all steps that are within the Contractor's control to ensure performance and to shorten the duration of the event of force majeure. Contractor shall provide notice of the force majeure event to the City within three (3) business days of the event or delay, whichever occurs later, to establish a



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mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, the City may terminate an order under the Contract if it is determined by the City that the Contractor will not be able to deliver goods or services in a timely manner to meet the business needs of the City.

6.2. Indemnity

A. IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS ASSIGNED BELOW:

1. "INDEMNIFIED PARTY" IS THE CITY AND THE CITY'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS.
2. "INDEMNIFYING PARTY" IS THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.
3. THE INDEMNIFYING PARTY SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE INDEMNIFIED PARTY AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, DEFICIENCIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, PENALTIES, FINES, COSTS OR EXPENSES, INCLUDING PROFESSIONAL FEES AND ATTORNEYS' FEES, THAT ARE INCURRED BY THE INDEMNIFIED PARTY ARISING OUT OF ANY DIRECT OR THIRD PARTY CLAIM OF:
 - a. BREACH OR NON-FULFILLMENT OF ANY PROVISION OF THIS CONTRACT BY THE INDEMNIFYING PARTY;
 - b. ANY FALSE REPRESENTATION OR WARRANTY MADE BY THE INDEMNIFYING PARTY IN THIS CONTRACT OR IN THE INDEMNIFYING PARTY'S PROPOSAL/RESPONSE LEADING TO THIS CONTRACT;
 - c. ANY NEGLIGENT OR MORE CULPABLE ACT OR OMISSION OF THE INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT, RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT;
 - d. BODILY INJURY; DEATH OF ANY PERSON; OCCUPATIONAL ILLNESS OR DISEASE; LOSS OF SERVICES, WAGES, OR INCOME; OR DAMAGE TO REAL OR PERSONAL PROPERTY CAUSED BY THE NEGLIGENT OR MORE CULPABLE ACTS OR OMISSIONS OF INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT; OR
 - e. ANY FAILURE OF THE INDEMNIFYING PARTY TO COMPLY WITH ANY APPLICABLE FEDERAL, STATE, OR LOCAL LAWS, REGULATIONS, OR CODES RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT.

B. THE INDEMNIFIED PARTY SHALL GIVE THE INDEMNIFYING PARTY WRITTEN NOTICE (A "CLAIM NOTICE") OF ANY CLAIM RECEIVED RELATED TO THIS CONTRACT. THE INDEMNIFYING PARTY'S DUTY TO DEFEND APPLIES IMMEDIATELY. THE INDEMNIFIED PARTY'S FAILURE TO PROVIDE A CLAIM NOTICE TO THE



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INDEMNIFYING PARTY DOES NOT RELIEVE THE INDEMNIFYING PARTY OF ITS DUTY TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNIFIED PARTY.

- C. THE INDEMNIFIED PARTY MAY SELECT ITS OWN LEGAL COUNSEL TO REPRESENT ITS INTERESTS. THE INDEMNIFYING PARTY SHALL:
 - 1. REIMBURSE THE INDEMNIFIED PARTY FOR ITS REASONABLE COSTS AND ATTORNEY'S FEES IMMEDIATELY UPON REQUEST, AS THEY ARE INCURRED, AND
 - 2. REMAIN RESPONSIBLE TO THE INDEMNIFIED PARTY FOR ANY LOSSES INDEMNIFIED UNDER THIS SECTION.
- D. THE INDEMNIFYING PARTY SHALL GIVE PROMPT, WRITTEN NOTICE TO THE INDEMNIFIED PARTY OF ANY PROPOSED SETTLEMENT OF A CLAIM THAT IS INDEMNIFIABLE UNDER THIS SECTION. THE INDEMNIFYING PARTY MAY NOT, WITHOUT THE INDEMNIFIED PARTY'S PRIOR, WRITTEN CONSENT, SETTLE OR COMPROMISE ANY CLAIM OR CONSENT TO THE ENTRY OF ANY JUDGMENT REGARDING WHICH INDEMNIFICATION IS BEING SOUGHT UNDER THIS SECTION.
- E. MAINTENANCE OF THE INSURANCE REQUIRED BY THIS CONTRACT SHALL NOT LIMIT THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER THIS SECTION. THE INDEMNIFYING PARTY SHALL REQUIRE ALL SUBCONTRACTORS TO INDEMNIFY THE CITY IN THE SAME MANNER AS PROVIDED IN THIS SECTION.

6.3. Network Access

As requested, Contractor shall execute a Network Connection Agreements as requested by each department using the contract. Contractor's failure to execute such agreements, as requested, will preclude them from providing services under this Contract to the requesting department.

6.4. Insurance

Insurance required for this contract is attached.

See **ATTACHMENT - Insurance**.

7. DISPUTE RESOLUTION

7.1. 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. If 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.



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7.2. 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.

7.3. 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, (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. The City shall be in default if it fails to make payment in accordance with the Payment terms of this Contract.

7.4. Termination for Cause

In the event of a default by either party, the non-defaulting party 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 defaulting party, within such 10 day period, cures such default, or provides evidence sufficient to prove to the non-defaulting party's reasonable satisfaction that such default does not, in fact, exist. Additionally, the City shall have the right to act in accordance with the terms defined by "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors." In addition to any other remedy available under law or in equity, either party shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the party as a result of the Contractor's default, including, without limitation, cost of cover, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and not exclusive of any other right or remedy provided by law. In the event of termination of the Contract under this Section, the Contractor shall handover all complete and partially complete Work Products and Documentation developed under this Contract.

7.5. Attorney's Fees

In consideration of the award and execution of this Contract and in consideration of the City's waiver of its right to attorney's fees, the Contractor knowingly and intentionally waives its right to attorney's fees under §271.153, Texas Local Government Code, in any administrative proceeding, alternative dispute resolution proceeding, or litigation arising out of or connected to this Contract.

7.6. Termination without Cause

The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon 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. In the event of termination of the Contract



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under this Section, the Contractor shall handover all complete and partially complete Work Products and Documentation developed under this Contract.

7.7. 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.

7.8. Delays

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 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 Clause. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

7.9. Waiver

The claim or right arising out of a breach of the Contract cannot 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.

7.10. 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 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 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 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 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 consider qualified individuals nominated to act as



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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 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The parties agree to participate in mediation in good faith for up to 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.

7.11. 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, 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.

7.12. 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.

8. CONTRACTOR RESPONSIBILITY, PROHIBITIONS

8.1. Financial Disclosures and Assurance

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.

8.2. 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



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any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

8.3. 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.

8.4. 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.

8.5. 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.

8.6. 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. **Non-Retaliation:** 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.
- C. **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.



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8.7. Wage Theft

All Offerors and resulting Contractors shall comply with the requirements of Austin City Code, Chapter 4-22 Wage Theft. ([Ordinance No. 20221201-031](#) | [Code of Ordinances](#) | [Austin, TX](#) | [Municode Library](#)).

- A. Offeror is required to provide certification that they have not been adjudicated for certain offenses related to Wage Theft within (5) years prior to the publication date of any solicitation preceding the execution of this contract or the date of contract execution, whichever is earlier.

See **SUBMITTAL – Employer Certification Wage Theft Ordinance – Responsibility Criteria**

- B. Contractor must complete the City of Austin Wage Theft Training within 30-days of Contract execution. Contractor shall contact the Financial Services Department – Central Procurement, Wage Compliance Team (Email: wagetheft@austintexas.gov) to register for training or ask additional questions regarding the City's Wage Theft program.

9. CONTRACT INFORMATION, RECORDS

9.1. 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, including security audits, under this Contract, at the City's expense. The Contractor agrees to refund to the City any overpayments disclosed by any such audit. The City agrees to protect from disclosure Contractor's confidential and proprietary information disclosed during an audit to the same extent it protects its own confidential and proprietary information, subject to the requirements of the Texas Public Information Act, Chapter 552, Texas Government Code.
- B. Records Retention:
 - 1. Contractor is subject to City Code Chapter 2-11 (Records Management), and as it may subsequently be amended.
 - 2. The Contractor shall retain all records for a period of three 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.

9.2. Confidentiality

The Parties may be granted access to certain of the other Party's or Licensor's Confidential Information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the Party or its licensors consider confidential) (Confidential Information) to provide the Deliverables to the City. The Parties acknowledge and agree that the Confidential Information is the valuable property of the disclosing Party and its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the



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disclosing Party and its licensors. The receiving Party (including its employees, Subcontractors, agents, or representatives) agrees it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without prior written consent of disclosing Party, or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an Order of a court or other governmental authority (including a Texas Attorney General opinion) with proper jurisdiction. In all cases, the receiving Party agrees to promptly notify the disclosing Party before disclosing Confidential Information to permit the disclosing Party reasonable time to seek an appropriate protective Order. The receiving Party agrees to use protective measures no less stringent than the receiving Party uses in its business to protect its own most valuable information. In all circumstances, the receiving Party's protective measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

- A. The Parties agree: (i) not to use Confidential Information for any reason other than for the purpose of providing or receiving the Deliverables, (ii) not to disclose Confidential Information to any third party other than to its employees who have a need to know the Confidential Information for furtherance of providing the Deliverables, and (iii) to promptly notify the disclosing Party of any request for Confidential Information to be disclosed under any law or order of any court or other governmental authority with proper jurisdiction, so as to permit disclosing Party reasonable time to seek an appropriate protective order.
- B. All Confidential Information and derivations thereof shall remain the sole and exclusive property of disclosing Party, and no license or other right to the Confidential Information or intellectual property is granted or implied hereby. Upon the written request of disclosing Party, the receiving Party shall promptly return to disclosing Party all tangible items of Confidential Information furnished by disclosing Party and all copies thereof or certify in writing that all Confidential Information, including all copies, has been destroyed.
- C. No expiration or termination of the Contract shall affect either Party's rights or obligations with respect to Confidential Information.
- D. The Parties acknowledge and agree that any breach or threatened breach of the Contract could cause harm for which money damages may not provide an adequate remedy.
- E. The parties agree that in the event of such a breach or threatened breach of the Contract, in addition to any other available remedies, City may seek temporary and permanent injunctive relief restraining the Contractor from disclosing or using, in whole or in part, any Confidential Information.

9.3. Texas Public Information Act

- A. All material submitted by the Contractor to the City related to the Contract may become subject to public disclosure upon receipt by the City. 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.



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- B. In accordance with Texas Government Code §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:
1. Preserve all Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract;
 2. 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
 3. On completion of the Contract, either:
 - a. Provide at no cost to the City all Contracting information related to the Contract that is in the custody or possession of Contractor; or
 - b. Preserve the Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section 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.

9.4. 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.

9.5. Advertising

The Contractor shall not advertise or publish, without the City's prior written consent, the fact that the City has entered into the Contract, except to the extent required by law.



ATTACHMENT – Insurance

1. GENERAL INSURANCE REQUIREMENTS:

- A. The Contractor shall provide a Certificate of Insurance as verification of coverages and endorsements required in Section B., Specific Insurance Requirements, to the City 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. 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.
- B. All endorsements naming the City as additional insured, waivers, and notices of cancellation shall indicate, and the Certificate of Insurance shall be mailed to the following address:

City of Austin
Financial Services Department - Central Procurement
505 Barton Springs Road, Ste 330
Austin, TX 78704

OR

PUInsuranceCompliance@austinTexas.gov
- C. 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.
- D. 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.
- E. The Contractor's and all Subcontractors' insurance coverage shall be written by companies authorized to do business in the State of Texas and have an A.M. Best rating of B+VII or better.
- F. 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.
- G. If insurance policies are not written for amounts specified in Section B., Specific Insurance Requirements, 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.
- H. 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.



ATTACHMENT – Insurance

- I. 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 exposure, statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- J. 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.
- K. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions greater than \$499,999 shall be disclosed on the Certificate of Insurance.
- L. If any required insurance is written on a claims-made basis, the Certificate of Insurance shall state that the coverage is claims-made and the retroactive date shall be prior to or coincident with the date of the Contract and the coverage continuous and shall be provided for 24 months following the completion of the Contract.
- M. The insurance coverages specified in Section B., Specific Insurance Requirements, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

2. SPECIFIC INSURANCE COVERAGE REQUIREMENTS:

The Contractor, consistent with its status as an independent Contractor shall carry and will cause its Subcontractors to carry, at a minimum 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.

2.1. *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. 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. 30 Days' Notice of Cancellation, Form WC420601, or equivalent coverage.

2.2. *Commercial General Liability Insurance:*

Coverage with minimum bodily injury and property damage per occurrence limits of \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).

- A. The policy shall contain the following provisions:



ATTACHMENT – Insurance

- (1) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project;
- (2) Independent Contractors coverage (Contractor/Subcontracted work);
- (3) Products/Completed Operations Liability for the duration of the warranty period;
- (4) If the project involves digging or drilling, provide Explosion, Collapse, and Underground (X, C, & U) Coverage.

B. The policy shall also include these endorsements in favor of the City of Austin:

- (1) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage;
- (2) 30 Days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage;
- (3) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

2.3. Business Automobile Liability Insurance:

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. The policy shall include these endorsements in favor of the City of Austin:

- A. Waiver of Subrogation, Endorsement CA0444, or equivalent coverage;
- B. 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.

3. ENDORSEMENTS:

The specific insurance coverage endorsements specified above, or their equivalents must be provided. If 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.

**CITY OF AUSTIN
SCOPE OF WORK
HIV TEST KITS
SOLICITATION NO.: IFB 9100 AAM1023**

1.0 Purpose

The City of Austin, hereinafter referred to as “the City” seeks bids in response to this solicitation to establish a Contract with a qualified vendor, referred to as “Contractor” to provide Austin Public Health Program annual supply of one-time use, rapid Human Immunodeficiency Virus (HIV) Type 1 and Type 2 test kits.

2.0 Term of Contract

This Contract shall remain in effect for an initial term of twelve (12) months or until the City terminates the Contract. This Contract may be extended automatically beyond the initial term for up to four (4) additional twelve (12) months period at the City’s sole option. Should the City not elect to exercise an extension option, the City will notify the Contractor at least sixty (60) calendar days in advance of the contract expiration date.

3.0 Background/Objective

HIV stands for Human Immunodeficiency Virus, and it crosses the boundaries of sexual orientation, gender, age, and ethnicity. More than 1 million people in the United States have HIV, and many are unaware of their status. About 40% of new HIV infections are transmitted by people who are unaware they have HIV. Diagnosing HIV quickly and linking people to treatment immediately are crucial steps to reducing new HIV infections. (Clinical Testing Guidance for HIV | HIV Nexus | CDC)

HIV is the virus that causes AIDS (Acquired Immunodeficiency Syndrome) if left untreated. AIDS is caused by at least two related retroviruses, HIV-1 and HIV-2. HIV is transmitted mainly by sexual contact, exposure to blood or blood products, or from an infected mother to her unborn child. People with increased risk of HIV infection include intravenous drug users, men having sex with men (MSM), transgendered and other key populations. Antibodies specific for HIV envelope proteins become prevalent in blood from persons infected with HIV; however, the presence of antibodies does not necessarily constitute a diagnosis of AIDS. Absence of antibodies to HIV does not indicate that an individual is absolutely free of HIV-1 or HIV-2; HIV has been isolated from seronegative individuals prior to seroconversion.

The CLIA-waived 4th generation Determine Alere Combo HIV Rapid test is an instrumental piece in the discovery of HIV-1 or HIV-2 in the body. Benefits of using the Determine Alere test include:

1. Provides both antigen and antibody rapid point-of-care results allowing detection of acute or latent infections.
2. Carries built-in quality controls on every test confirming viability.
3. The 20-minute result time allows for clear results to be read in fast-paced non-clinical settings.
4. Multiple sample type collection use of either whole blood, serum, or plasma.
5. Has a 99.9% sensitivity rating, providing the most accurate available.
6. CLIA waived allowing non-licensed clinical staff to perform testing services.

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Use of the Determine Alere Combo HIV 1/2 test is mainly in low/medium-volume outreach settings in either our mobile outreach vehicle or within a brick-and-mortar space, or in the Sexual Health Clinic during Express Testing operations. Both testing services consist of 20-minute appointments per patient allowing us to serve 12 patients per event. This allows each patient to receive their results before leaving the testing space. The built-in quality control allows Red Ribbon to verify viability while in various settings testing for complications like extreme temperatures inside and out and movement of the vehicle. This ensures that the results provided are as accurate as possible and patients trust those results.

4.0 Specification/Requirements

Deliver the following medical supply products when they are ordered by Austin Public Health:

- **Abbott Determine HIV 1/2 Ag/Ab Combo Test** Sexual Health Test Kit (manufacturer number 7D2648)
- **Abbott Determine HIV ½ Ag/Ab Combo Controls** Sexual Health External Control Kit (manufacturer number 7D2628)

5.0 Ordering & Delivery/Requirements

- Products will be ordered by Austin Public Health Program points of contact as the need arises.
- Orders may be placed by email, phone, or from an online vendor tool if available.
- No minimum requirements in orders.
- The Austin Public Health Program point of contact will inspect the shipment
 - They will check to whom the package is addressed to store in appropriate location
 - They will note date of receipt of supply
 - They will check contents of shipment
 - If the medical supplies are compromised, they will note
 - They will contact the vendor to share details of any discrepancy in the shipment.
- There may be several clinics ordering these products, and there may be multiple ship-to locations.
- It is possible that a new clinic will request products which will require a new ship-to location.
- What information do deliveries need to contain for acceptance?
 - Purchase order number
 - Vendor order number
 - Quantity ordered
 - Backordered quantities
 - Description of items shipped

DELIVERY LOCATION:

Delivery is to be made within fourteen (14) calendar days after the order is placed (either verbally or in writing), unless the vendor has a limited inventory or no inventory. Delivery shall be made to the following location unless otherwise specified by the City in the order:

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Location/Facility Name:	Austin Public Health, Sexual Health Clinic
Address:	15 Waller Street, 1st Floor Austin, TX 78702
Days/Hours of Operation:	M-F; 8AM-4:30PM

6.0 Acceptance

- Program staff will review shipping documents by checking that packing list matches order and will confirm the delivery address and intended recipient physical damage.
- Program staff will check for physical damage by inspecting all sides of the boxes, crates, and pallets for dents, punctures, tears, crushing or water damage.
- Program staff will confirm quantities by unpacking and ensuring the exact number of units with the packing list and original order.

7.0 Specific Invoice Requirements

The City's preference is to have invoices emailed to hhsdapinvoices@austintexas.gov. For questions regarding your invoice/payment please contact the City Contract Manager.

Contractor shall email copies of packing slips to aphpurch@austintexas.gov.