

**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD SALE TERMS AND CONDITIONS (IFB, SALE)**

The City of Austin (City) and the Contractor agree as follows:

1. **CONTRACTOR'S OBLIGATIONS.** The Contractor shall fully and timely meet all obligations described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM.** Unless otherwise specified in the Solicitation, the Contract shall be effective as of the date the Contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **THE CONTRACTOR TO PACKAGE AND TRANSPORT GOODS.** The Contractor shall bear the cost of preparing, packaging and transporting Goods from City facilities unless otherwise provided.
4. **TITLE & RISK OF LOSS.** Title-to and risk-of-loss of the Goods shall pass to the Contractor when the Contractor receives and accepts the Goods. The City warrants that it has the right to convey the Goods to the Contractor, and the Contractor will receive good and indefeasible title to the Goods sold and delivered to the Contractor by the City, free and clear of all liens, encumbrances and claims.
5. **LIMITATION OF LIABILITY.** GOODS ARE SOLD BY THE CITY ON AN "AS-IS, WHERE-IS" BASIS. EXCEPT AS EXPRESSLY SET FORTH IN THE SOLICITATION, THE CITY DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, AS TO THE CONDITION, QUALITY, OR FITNESS OF THE GOODS, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL THE CITY BE LIABLE TO THE CONTRACTOR ON ANY CLAIM OR CAUSE OF ACTION RELATED TO OR CONCERNING THE GOODS OR THE SOLICITATION FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES. THE CITY'S TOTAL AGGREGATE LIABILITY TO THE CONTRACTOR ON ANY CLAIMS OR CAUSES OF ACTION RELATED TO OR CONCERNING THE GOODS OR THE SOLICITATION SHALL BE LIMITED TO THE SALE PRICE OF THE GOODS.
6. **WORKFORCE.**
  - A. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of taking delivery of goods under a City of Austin contract or on the City's property;
    - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
    - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs on City property.
  - B. If the City or City representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on City property, the Contractor shall immediately remove such worker from Contract participation, and may not employ such worker again in Contract participation without the City's prior written consent.
7. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS.** The Contractor, its subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the Contract, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

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8. **PAYMENT** Payment for the Goods shall be due prior to taking possession of the Goods, unless otherwise specified in the Solicitation.
9. **WARRANTY- PRICE.** 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 prices with any other firm or with any competitor.
10. **CREDIT.** The Bidder shall promptly provide the City, upon request, such financial information as the City may require to determine the credit worthiness of the Bidder, including but not limited to, annual reports, audited financial statements, and SEC form 10Ks. The City may condition any sale on the Bidder either pre-paying for the Goods being sold, or upon the Bidder posting an unconditional payment guarantee from a credit-worthy parent, affiliate, or principal of Bidder, or other security for payment in an amount and form acceptable to the City. Failure of the Bidder to post or maintain required security, or an adverse credit report on Bidder from a nationally recognized credit rating agency, shall be grounds for insecurity, for which the City may demand written assurance.
11. **RIGHT TO ASSURANCE.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified when demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
12. **DEFAULT.** The Contractor shall be in default under the Contract if the Contractor (a) fails to make any payment when due, (b) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (c) fails to provide adequate assurance of performance under Paragraph 11, or (d) becomes insolvent or seeks relief under the bankruptcy laws of the United States.
13. **TERMINATION FOR CAUSE.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. If Buyer should fail to make any payment in full when due, then in addition to any other right or remedy available to the City, City may immediately and without notice suspend any further sales or deliveries to Contractor until the amount due, including accrued interest, has been paid in full. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's Contractor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative, and are not exclusive of any other right or remedy provided by law.
14. **TERMINATION WITHOUT CAUSE.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) 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 Contractor shall pay the City for all Goods received but not paid for prior to the date of termination in accordance with the terms hereof.
15. **FRAUD.** Fraudulent statements by the Contractor on any Offer shall be grounds for the termination of the Contract for cause by the City, and may result in legal action.
16. **INDEMNITY.**
  - A. Definitions:
    - i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all costs and expenses

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of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

- (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
  - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties).
- ii. "Fault" shall include negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

B. The Contractor shall defend (at the option of the City), indemnify, and hold the City, its successors, assigns, officers, employees and elected officials harmless from and against all Indemnified Claims arising out of, incident to, concerning or resulting from the fault of the Contractor, or the Contractor's agents, employees or subcontractors, in the performance of the Contractor's obligations under the Contract. Nothing herein shall be deemed to limit the rights of the City or the Contractor (including, but not limited to, the right to seek contribution) against any third party who may be liable for an indemnified claim.

17. **INSURANCE.** (reference Section 0400 for specific coverage requirements.) The following insurance requirement applies to contracts when delivery is taken at City facilities or at sites designated by the City.

A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions for the duration of the Contract and during any warranty period.
- ii. The Contractor shall forward Certificates of Insurance with the endorsements required below to the City as verification of coverage within fourteen (14) calendar days after notification of award, unless otherwise specified.
- iii. The Contractor shall not commence work until the required insurance is obtained and has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance for all subcontractors to the City prior to them commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:

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

- vii. 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 Contractor and the City, shall be considered primary coverage as applicable.
- viii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in

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amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

- ix. 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.
- x. The City reserves the right to review the insurance requirements set forth during the effective period of this Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City, based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- xi. 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.
- xii. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- xiii. The Contractor shall endeavor to provide the City thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiv. If City-owned property is in the care, custody or control of the Contractor, then the Contractor shall provide property coverage on an "All Risk of Physical Loss" form. The coverage shall be provided on a replacement cost basis for the 100% value of City-owned property. If property is being transported or stored off-site by the Contractor, then transit and storage coverage shall also be provided. The City shall be endorsed onto the policy as a loss payee.
- xv. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions are required minimums and are not intended to limit the responsibility or liability of the Contractor.

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- 18. **CLAIMS.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten days after the Contractor becomes aware of such action. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, Austin, TX 78701.
- 19. **NOTICES.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by US Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
- 20. **RIGHTS TO BID AND CONTRACTUAL MATERIAL.** All material submitted by the Contractor to the City shall become the property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Open Records Act, Chapter 552, Texas Government Code.
- 21. **ADVERTISING.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
- 22. **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,

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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 recover the full amount of such commission, percentage, brokerage or contingent fee.

23. **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.
24. **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 this solicitation shall have a financial interest, direct or indirect, in the Contract resulting from this 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.
25. **INDEPENDENT CONTRACTOR.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's actions 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.
26. **ASSIGNMENT-DELEGATION.** The Contract shall be binding upon and inure 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.
27. **WAIVER.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the City or the Contractor 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.
28. **MODIFICATIONS.** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any Contractor document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
29. **INTERPRETATION.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to, supplement, or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
30. **DISPUTE RESOLUTION.**

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- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a Contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The Contractor and the City will share the costs of mediation equally.

31. **JURISDICTION AND VENUE.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

32. **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.

33. **HOLIDAYS.** The following holidays are observed by the City:

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

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Christmas Eve	December 24
Christmas Day	December 25

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

34. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to indemnity and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.