

**1. PREPARATION OF BID**

**1.1 Bid Documents.** Each Bidder must prepare its Bid on forms furnished by OWNER or as otherwise specified or permitted. Blank spaces for each item in Bid form must be filled. Bidder must submit a price for each item in Bid. In case of conflict between unit prices and extensions, unit prices shall govern. The Bid must be executed in the complete and correct legal name of individual, partnership, firm, corporation or other legal entity constituting the Bidder.

**1.2 Vendor Registration.** Prime Contractors must be registered with the OWNER prior to submitting a Bid electronically via Austin Finance Online. All CONTRACTORS must be registered to do business with OWNER prior to Contract Award. All Subcontractors must be registered with the OWNER prior to execution of a contract. Prime Contractors are responsible for ensuring that their Subcontractors are registered as vendors with the City of Austin. Registration can be done through the OWNER's on-line Vendor Registration system. Log onto [https://www.austintexas.gov/financeonline/account\\_services/account/login.cfm](https://www.austintexas.gov/financeonline/account_services/account/login.cfm) and follow the directions.

**1.3 Pre-Bid Conference.** Unless otherwise notified, Bidders must attend the Pre-Bid Conference to ensure their understanding of OWNER's bidding and contracting requirements, particularly MBE/WBE Procurement Program requirements.

**1.4 Sales Tax Exemption.** The Owner is a tax-exempt organization as defined by Chapter 11 of the Property Tax Code of Texas. Bid prices shall not include sales tax on materials, supplies, or equipment that are incorporated into the real property interest of the OWNER or are otherwise completely used and consumed in the performance of the Contract. OWNER will furnish CONTRACTOR with a Sales Tax Exemption Certificate to be issued to Suppliers in lieu of the tax.

**1.5 Minimum Wages.** Workers on Project shall be paid not less than wage rates, including fringe benefits, as published by the Department of Labor (DOL) for Building Construction and Heavy and Highway Trades "AS APPLICABLE" and/or the minimum wage required by City of Austin Ordinance No. 20160324-015, whichever is higher. The Total Minimum Wage required can be met using any combination of cash and non-cash qualified fringe benefits provided the cash component meets or exceeds the minimum wage required.

**1.6 Addenda.** Bidder shall be knowledgeable of all Addenda issued and shall acknowledge all Addenda in spaces provided on Bid form. Further information regarding the Bid documents and the Project may be obtained from the Project Manager listed at the end of Section 00020, Invitation for Bids.

**1.7 Required Items.** Bids must include all specified items in this section and be submitted in accordance with paragraph No. 7 below. Any additional requirement to the bid submittal is specified in Section 00820. Any corrections to a Bid shall be initialed by the person signing the Bid.

**1.8 Professional Services.** Bidders must secure any required professional services that are defined as professional services under the Professional Services Procurement Act, Chapter 2254 of the Texas Government Code (for example: registered professional land surveyors and professional engineers) using the qualifications based selection process

prescribed by that chapter. (Note: It is a violation of State Law to solicit Bids for professional services.)

**1.9 Further Information.** Prospective Bidders desiring further information or interpretation of Project Manual or Drawings must make a written request for such information to OWNER addressed to the Authorized Contact Person listed in Section 00020 no later than seven (7) Working Days before Bid opening. Interpretation of Project Manual or Drawings will be made by Addendum only and obtained through the City's Vendor Connection website. Log on to: [www.austintexas.gov/financeonline/vendor\\_connection/index.cfm](http://www.austintexas.gov/financeonline/vendor_connection/index.cfm). Any verbal communications will not be binding on the OWNER.

**1.10 Anti-Lobbying and Procurement.** Article 6, Chapter 2-7, City Code, repealed and replaced effective on June 25, 2018, prohibits lobbying activities or representations by Offerors during the No Lobbying Period as defined in the Ordinance.

**1.10.1. FINDINGS; PURPOSE.**

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

**1.10.2. APPLICABILITY.**

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

**1.10.3. DEFINITIONS.**

In this article:

- (A) AGENT means a person authorized by a respondent to act for or in place of the respondent in order to communicate on behalf of that respondent. Each of the following is presumed to be an agent:
  - (i) a current full-time or part-time employee, owner, director, officer, member, or manager of a respondent;

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- (ii) a person related within the first degree of consanguinity or affinity to a current fulltime or part-time employee, owner, director, officer, member, or manager of a respondent;
- (iii) a person related within the first degree of consanguinity or affinity to the respondent, if a respondent is an individual person; and Section 0200 V2, Solicitation Instructions 4 Rev. 06-26-2018
- (iv) a lobbyist, attorney, or other legal representative of the respondent that has been retained by the respondent with respect to the subject matter of either the solicitation or the respondent's response to the solicitation.

(B) AUTHORIZED CONTACT PERSON means a City employee designated in a City solicitation as the point of contact for all purposes for that solicitation.

(C) CITY EMPLOYEE is defined in Section 2-7-2 (*Definitions*), and further includes an independent contractor hired by the City with respect to the solicitation.

(D) CITY OFFICIAL is defined in Section 2-7-2 (*Definitions*).

(E) NO-LOBBYING PERIOD means the period of time beginning at the date and time a solicitation is published and continuing through the earliest of the following:

- (i) the date the last contract resulting from the solicitation is signed;
- (ii) 60 days following council authorization of the last contract resulting from the solicitation; or
- (iii) cancellation of the solicitation by the City

(F) PURCHASING OFFICER means the City employee authorized to carry out the purchasing and procurement functions and authority of the City.

(G) RESPONSE means a written offer or submission in reply to a solicitation.

(H) RESPONDENT means a person or entity that has timely submitted or subsequently timely submits a response to a City solicitation, even if that person subsequently withdraws its response or has been disqualified by the City for any reason. Respondent includes:

- (i) a subsidiary or parent of a respondent;
- (ii) a joint enterprise, joint venture, or partnership with an interest in a response and in which a respondent is a member or is otherwise involved, including any partner in such joint enterprise, joint venture, or partnership; and
- (iii) a subcontractor to a respondent in connection with that respondent's response.

(I) SOLICITATION means an opportunity to compete to conduct business with the City that requires council approval under City Charter Article VII Section 15 (*Purchase Procedure*), and includes, without limitation:

- (i) an invitation for bids;
- (ii) a request for proposals;
- (iii) a request for qualifications;
- (iv) a notice of funding availability; and
- (v) any other competitive solicitation process for which the purchasing officer, in the purchasing officer's sole discretion, affirmatively determines this article should apply in accordance with Section 2-B.

### **1.10.4. RESTRICTION ON LOBBYING.**

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

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

### **1.10.5. PERMITTED COMMUNICATIONS.**

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

**1.10.6. MODIFICATION OF RESTRICTION.**

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

**1.10.7. NOTICE.**

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

**1.10.8. DISCLOSURE OF VIOLATION.**

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

**1.10.9. ENFORCEMENT.**

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

**1.10.10. DISQUALIFICATION; CONTRACT VOIDABLE.**

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

**1.11 City's Minority-Owned and Women-Owned Business Enterprise / Disadvantaged Business Enterprise (MBE/WBE or DBE) Program Requirements. Good Faith Efforts.** When a bidder cannot achieve the MBE/WBE or DBE goals or subgoals established for the project, the bidder must document its Good Faith Efforts to meet the goals or subgoals. Good Faith Effort evaluations will consider, at a minimum, the bidder's efforts to do the following:

**1.11.1** Soliciting through at least two reasonable, available and verifiable means MBEs/WBEs within the Significant Local Business Presence boundaries at least seven (7) business days prior to the bid opening date to allow the MBEs/WBEs or DBEs to respond to the bid.

**1.11.2** Providing interested MBEs/WBEs or DBEs adequate information about the bid documents and requirements, including addenda, in a timely manner to assist them in responding to the bid.

**1.11.3** Negotiating in good faith with interested MBEs/WBEs DBEs that have submitted bids to the bidder.

**1.11.4** Publishing notice in a local publication such as a newspaper, trade association publication or via electronic/social media.

**1.11.5** Not rejecting MBEs/WBEs or DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.

**1.11.6** Making economically feasible portions of the work available to MBE/WBE or DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE/WBE or DBE subcontractors and suppliers, so as to facilitate meeting the goals or subgoals.

**1.11.7** The ability or desire of the bidder to perform the project work with its own organization does not relieve the bidder of the responsibility to make Good Faith Efforts.

**1.11.8** Bidders are not required to accept higher quotes in order to meet the goals

or subgoals.

**1.11.9** Effectively using the services of Minority Person/Women community organizations; Minority Person/Women Contractors groups; local, state and federal Minority Person/Women business assistance offices; and other organizations to provide assistance in solicitation and utilization of MBEs, WBEs and/or DBEs.

**1.11.10** In assessing minimum Good Faith Efforts, the OWNER may consider (1) whether the bidder sought guidance from the City of Austin Small and Minority Business Resources Department (SMBR) on any question regarding compliance with these requirements; and (2) the performance of other bidders in meeting the goals.

For additional information, refer to the MBE/WBE or DBE Compliance Program Requirements Volume of the Project Manual.

Bid shopping is not allowed in conjunction with this solicitation and may result in the disqualification of prospective bidders and subcontractors.

## **2. ESTIMATES OF QUANTITIES (UNIT PRICE CONTRACTS ONLY)**

Quantities listed in unit price Bid form are to be considered approximate quantities and will be used only for comparison of Bids. Payment to CONTRACTOR will be made only for actual quantities of Work performed or materials furnished in accordance with Contract and it is understood that quantities may be increased or decreased as provided in Section 00700, General Conditions, and as may be modified by Section 00810, Supplemental General Conditions.

## **3. DRAWINGS, PROJECT MANUAL AND SITE (S) OF WORK**

Before submitting a Bid, the Bidder shall carefully examine the Bid Documents, site(s) of the proposed Work, soils, and other conditions that may affect the performance of the Work to satisfy the Bidder as to character, quality and quantities of Work to be performed and materials to be furnished. By submitting a Bid, the Bidder will be deemed to have certified that the Bidder has complied with these requirements. If, during preparation of the Bid, the Bidder discovers any suspected discrepancies or errors, the Bidder must immediately notify the Authorized Contact Person in writing of the suspected discrepancy or error. Failure to provide written notice of any suspected discrepancies or errors may be cause for rejection of the Bid.

## **4. BID GUARANTY**

All Bids shall be accompanied by a Bid guaranty in an amount of not less than five percent (5%) of the total Bid. Bid guaranty will be a Bid bond with Power of Attorney attached, issued by a solvent surety authorized under laws of the State of Texas and acceptable to OWNER. For Bidders electing to submit Bids and Bid Guaranties electronically via Austin Finance Online, Bid Guaranties will be verified by the Owner prior to bid certification and electronic copies of Bid Guaranties will not be returned to Bidders.

The Bid guaranty accompanying the Bid of the three (3) apparent low Bidders will be retained until Contract is awarded and successful Bidder executes Contract and furnishes required bonds and insurance, after which Bid guaranties will be returned to the Bidders. All other Bid guaranties will be returned after Bid certification. In the event that the Bidder to whom the Contract is awarded fails to execute the Contract within five (5) working days of receipt

of a complete set of Contract Documents whether in electronic or hard copy form, the Bidder agrees that the OWNER in its discretion may rescind the initial award and award the Contract to the next lowest responsible Bidder.

**5. PERFORMANCE AND PAYMENT BONDS**

When performance and/or payment bonds are required, each shall be issued in an amount equal to the Contract Amount as security for the faithful performance and/or payment of all Contractor's obligations under the Contract Documents. Performance and payment bonds shall be issued by a solvent corporate surety authorized to do business in the State of Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law.

**6. CONSIDERATION OF BID AMOUNT**

For purpose of award, after Bids are opened, reviewed, and certified, the total amount of the Bid, including accepted Bid alternates, will be considered the amount of the Bid. Certified Bid tabulations will be made available to the public through the City's Vendor Connection website, log on [www.austintexas.gov/financeonline/vendor\\_connection/index.cfm](http://www.austintexas.gov/financeonline/vendor_connection/index.cfm). OWNER reserves the right to reject any or all Bids and to waive any minor informality in any Bid or solicitation procedure (a minor informality is one that does not affect the competitiveness of the Bids).

**7. SUBMISSION OF BID**

Each Bid must be completed and signed by person(s) authorized to bind individual, partnership, firm, corporation, or any other legal entity submitting the Bid, and, shall include the following in one envelope or electronically via Austin Finance Online (see [eResponse](#), Attachment 1 -Submitting Bids in Austin Finance Online):

- 7.1** One copy of Bid form (Section 00300L or 00300U) completed and signed.
- 7.2** Acknowledgment of receipt of Addenda issued in spaces provided in Bid form.
- 7.3** Required Bid guaranty (copy of Bid guaranty if submitted electronically via Austin Finance Online).
- 7.4** Required Information indicated in Drawings or Project Manual as specified in Section 00820.
- 7.5** One copy of Total Bid Form if bid is submitted electronically via Austin Finance Online.

Bid must be accompanied by an MBE/WBE or DBE Compliance Plan. Compliance Plans will either be submitted separately, in a second envelope or electronically via Austin Finance Online, prior to the date and time set forth in Section 00020, Invitation for Bids. The Compliance Plan forms are included in the MBE/WBE Procurement Program Package or DBE Procurement Program Package (a separately bound volume).

Bid shall include all specified items in this section submitted electronically via Austin Finance Online, or may be submitted to the Capital Contracting Office in a sealed envelope, clearly identified on outside as a Bid to OWNER, with Bidder's company name and address, project name, bid due date/time, signed acknowledgement of the number of Addenda received and authorized signature. Failure to submit Bid appropriately may subject Bidder to



disqualification.

Sealed Bids may be mailed using the address below:

<b>Address for US Mail (If mailed to the physical address, the proposal will be returned unopened)</b>
City of Austin
Capital Contracting Office
P. O. Box 1088
Austin, Texas 78767-1088

**NOTE: Bids must either be received and time stamped in the Capital Contracting Office prior to the Due Date and Time or submitted electronically via Austin Finance Online. The time of record for those electronically submitted is the time received in Austin Finance OnLine. It is the responsibility of the Offeror to ensure that their Bid arrives at the reception desk in the Capital Contracting Office or electronically prior to the time and date indicated. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Proposal arriving on time.**

It is the sole responsibility of the Bidder to ensure timely delivery of Bid. OWNER will not be responsible for failure of service on the part of the U.S. Post Office, courier services, or any other form of delivery service chosen by the Bidder. (See Section 00820, Modifications to Bidding Requirements and Contract Forms, for modifications to solicitations without MBE/WBE or DBE goals.)

In submitting its Bid, Bidder certifies that it has not lobbied the City or its officials, managers, employees, consultants, or contractors in such a manner as to influence or to attempt to influence the bidding process. In the event it reasonably appears that the Bidder influenced or attempted to influence the bidding process, the City may, in its discretion, reject the Bid.

**8. WITHDRAWAL OF BID**

A Sealed Bid may be withdrawn by a Bidder, provided an authorized individual of the Bidder submits a written request to withdraw the Bid prior to the time set for opening the Bids. For withdrawal of electronic bids see [eResponse](#), Attachment 1 -Submitting Bids in Austin Finance Online)

**9. REJECTION OF BIDS**

**9.1** The following **will** be cause to reject a Bid:

**9.1.1** Failure to submit Section 00300 (Bid Form) and signed by an individual empowered to bind the Bidder.

**9.1.2** Bids which are not accompanied by acceptable Bid guaranty, with Power of Attorney attached, or a letter certifying the Bidder's ability to be bonded, from a surety company, in accordance with Paragraph 4 above.

**9.1.3** More than one Bid for same Work from an individual, firm, partnership or corporation.

**9.1.4** Evidence of collusion among Bidders.

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**9.1.5** Sworn testimony or discovery in pending litigation with OWNER which discloses misconduct or willful refusal by contractor to comply with subject contract or instructions of OWNER.

**9.1.6** Failure to submit MBE/WBE or DBE Compliance Plan in accordance with the separately bound volume titled MBE/WBE Procurement Program Package or DBE Procurement Program Package.

**9.1.7** Failure to have an authorized agent of the Bidder attend the mandatory Pre-Bid Conference, if applicable.

**9.1.8** Bids received from a Bidder who has been debarred or suspended by OWNER's Purchasing Officer.

**9.1.9** Bids received from a Bidder when Bidder or principals are currently debarred or suspended by Federal, State or City governmental agencies. (Applicable for Bid amounts equal to or in excess of \$25,000.00).

**9.1.10** Bids received from a Bidder, who is identified on a list maintained by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to a foreign terrorist organization, unless otherwise exempted from sanctions by the United States government.

**9.2** The following **may** be cause to reject a Bid:

**9.2.1** Poor performance in execution of work under a previous City of Austin contract.

**9.2.2** Failure to achieve reasonable progress on an existing City of Austin contract.

**9.2.3** Default on previous contracts or failure to execute Contract after award.

**9.2.4** Evidence of failure to pay Subcontractors, Suppliers or employees in accordance with Contract requirements.

**9.2.5** Bids containing omissions, alterations of form, additions, qualifications or conditions not called for by OWNER, or incomplete Bids may be rejected. In any case of ambiguity or lack of clarity in the Bid, OWNER reserves right to determine most advantageous Bid or to reject the Bid.

**9.2.6** Failure to acknowledge receipt of Addenda.

**9.2.7** Failure to submit any of the items specified below in paragraph 11, "Submission of Post Bid Information".

**9.2.8** Failure to identify a dollar amount (price) of a unit price(s) in the 00300U including all Bid Alternates in the Bid Form 00300U or 00300L.

**9.2.9** Failure to submit post-Bid information within the allotted time(s) (see paragraph 11 for post-Bid requirements).

**9.2.10** Failure to timely execute Contract after award.

**9.2.11** Previous environmental violations resulting in fines or citations by a governmental entity (i.e. U.S. Environmental Protection Agency, Texas Commission on Environmental Quality, etc.).

**9.2.12** Safety record as set forth in Section 00410, Statement of Bidder's Safety Experience.

**9.2.13** Failure of Bidder to demonstrate the minimum experience required as specified in Section 00400 if that Section is included in the bidding documents.

**9.2.14** Evidence of Bidder's lack of sufficient resources, workforce, equipment or supervision, if required by inclusion of appropriate attachments in Section 00400.

**9.2.15** Evidence of poor performance on previous Projects as documented in Owner's project performance evaluations.

**9.2.16** Unbalanced Unit Price Bid: "Unbalanced Bid" means a Bid, which includes a Bid that is based on unit prices which are significantly less than cost for some Bid items and significantly more than cost for others. This may be evidenced by submission of unit price Bid items where the cost are significantly higher/lower than the cost of the same Bid items submitted by other Bidders on the project.

## **10. PROTEST PROCEDURES**

The OWNER's Capital Contracting Officer has the authority to settle or resolve any claim of an alleged deficiency or protest. The procedures for notifying OWNER of an alleged deficiency or filing a protest are listed below. If you fail to comply with any of these requirements, the Capital Contracting Officer may dismiss your complaint or protest.

**10.1 Prior to Bid opening:** If you are a prospective Bidder and you become aware of the facts regarding what you believe is a deficiency in the solicitation process before the Bid is opened, you must notify OWNER in writing of the alleged deficiency before that date, giving OWNER an opportunity to resolve the situation prior to the Bid opening.

**10.2 After Bid opening:** If you submit a Bid to OWNER and (1) you have been found non-responsive, or (2) you believe that there has been a deficiency in the solicitation process or the award, you have the opportunity to protest the solicitation process or the recommended award as follows:

**10.2.1** You must file written notice of your intent to protest within four (4) calendar days of the date that you know or should have known of the facts relating to the protest. If you do not file a written notice of intent within this time, you have waived all rights to protest the solicitation process or the award.

**10.2.2** You must file your written protest within fourteen (14) calendar days of the date that you know or should have known of the facts relating to the protest unless you know of the facts before the Bid has been opened. If you know of the facts before that date, you must notify OWNER as stated above.

**10.2.3** You must submit your protest in writing and must include the following information:

- .1** your name, address, telephone, and email address;

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- .2 the solicitation number and the CIP number, if applicable;
- .3 a detailed statement of the factual grounds for the protest, including copies of any relevant documents.

**10.2.4** Your protest must be concise and presented logically and factually to help with OWNER's review.

**10.2.5** When OWNER receives a timely written protest, the Capital Contracting Officer will determine whether the grounds for your protest are sufficient. If the Capital Contracting Officer decides that the grounds are sufficient, the Capital Contracting Office will schedule a protest hearing, usually within five (5) working days. If the Capital Contracting Officer determines that your grounds are insufficient, you will be notified of that decision in writing.

**10.2.6** 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 OWNER are: representatives from the department that requested the purchase, the Law Department, the Capital Contracting Office, and other appropriate City staff. You may bring a representative or anyone else that will present information to support the factual grounds for your protest with you to the hearing.

**10.2.7** A decision will usually be made within fifteen (15) calendar days after the hearing.

**10.2.8** The Capital Contracting Officer will send you a copy of the hearing decision after the appropriate City staff has reviewed the decision.

**10.2.9** When a protest is filed, OWNER usually will not make an award until a decision on the protest is made. However, OWNER will not delay an award if the City Manager or the Capital Contracting Officer determines that:

- .1 OWNER urgently requires the supplies or services to be purchased, or
- .2 Failure to make an award promptly will unduly delay delivery or performance.

In those instances, the Capital Contracting Office will notify you and make every effort to resolve your protest before the award.

The protest or notice of intent and the protest shall be submitted in writing to:

Address for Delivery Service:

City of Austin

Capital Contracting Office

ATTN: Capital Contracting Officer

One Texas Center

505 Barton Springs Rd.

Suite 330

Austin, Texas 78704

PHONE: 512/974-7141

Address for US Mail:

City of Austin

Capital Contracting Office

ATTN: Capital Contracting Officer

P.O. Box 1088

Austin, Texas 78767-1088

## **11. SUBMISSION OF POST BID INFORMATION**

**11.1** Prior to determination of the certified low Bidder, the three (3) apparent low Bidders must submit to OWNER the following information within three (3) business days of receipt

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of notice of apparent low Bidder status by the OWNER:

**11.1.1** One copy of Attachments A-I and any other specifically designated Attachments of the Statement of Bidder's Experience (Section 00400), completed and signed. (Unless provided to the contrary in Section 00820 Modifications to Bidding Requirements and Contract Forms). (Note: OWNER reserves the right to solely determine whether the comparable experience documentation provided by the Bidder is sufficient and relevant to the Work described in the Contract Documents for the Bidder to be considered a responsible Bidder.)

**11.1.2** One Copy of the Certificate of Non-Suspension or Debarment (Section 00405), completed and signed. (Applicable for Bid amounts equal to or in excess of \$25,000.00.)

**11.1.3** One copy of Section 00410, Statement of Bidder's Safety Experience, including required attachments, completed and signed.

**11.1.4** One copy of the Title VI Assurances Appendix A (Section 00631), completed and signed.

**11.1.5** One copy of the Title VI Assurance Appendix E (Section 00632), completed and signed.

**11.1.6** One copy of Exhibit A Federal Provisions (Section 00810A) completed and signed. (Federal projects only)

**11.1.7** Such other information as is required to evaluate Bid or Bidder.

**11.2** Upon notification of status as certified low Bidder, Bidder shall submit the following information to OWNER within three (3) business days:

**11.2.1** Confirmation Letters between Bidder and all subcontractor(s) and all supplier(s) identified in the MBE/WBE Compliance Plan.

**11.2.2** Section 00425A, Insurance Cost Form. For ROCIP projects.

**11.2.3** Section 00425B, Contractor Affidavit of Receipt and Provision of ROCIP Information, and Subcontractor Affidavit of Receipt and Provision of ROCIP Information (for Subcontractor(s) of all tiers identified in the MBE/WBE Compliance Plan). For ROCIP projects.

**11.2.4** Such other information as required. In addition, the Bidder acknowledges and agrees that the failure to timely provide the additional information required by this section will result in a determination that, for the purposes of this solicitation, the Bidder has not provided sufficient information for the OWNER to be able to determine that the Bidder is a responsible Bidder.

## **12. AWARD AND EXECUTION OF CONTRACT**

OWNER will process Bids expeditiously. Award of Contract will be to the lowest, responsible Bidder meeting all requirements of the Bid Documents. OWNER may not award Contract to a nonresident Bidder unless the nonresident underbids the lowest Bid submitted by a responsible resident Bidder by an amount that is not less than the amount by which a resident Bidder would be required to underbid the nonresident Bidder to obtain a

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comparable contract in the state in which the nonresident's principal place of business is located.

Award of Contract will occur within the period identified on the Bid form, unless mutually agreed between the parties. Capital Contracting Officer shall submit recommendation for award to the City Council for those project awards requiring City Council action. Contract will be signed by City Manager or his/her designee after award and submission of required documentation by Bidder. Contract will not be binding upon OWNER until it has been executed by both parties. OWNER will process the Contract expeditiously. However, OWNER will not be liable for any delays prior to the award or execution of Contract.

Upon contract award, the selected Bidder must submit either their existing or an updated personnel policy (on letterhead) documenting conformity with City Code, Chapter 5-4, § 5-4-2. If the company does not submit a copy of their personnel policy incorporating the non-discrimination policy, the City of Austin Nondiscrimination Policy (Section 00630) will be considered the Bidder's nondiscrimination policy.

In any case of ambiguity or lack of clarity in the Bid, OWNER reserves the right to determine the most advantageous Bid or to reject the Bid.

Notwithstanding anything in this Section 00100 to the contrary, the OWNER may award a contract for construction services in an amount of less than \$100,000 to a bidder whose principal place of business is in the City of Austin and whose bid is within 5% of the lowest bid price received from a bidder whose principal place of business is not within the City of Austin, if the City finds that the local bidder offers the City the best combination of contract price and additional economic development opportunities for the City created by the contract award including the employment of resident of the City and increased tax revenues to the City.

### **13. PARTNERING**

In order to complete the Work in a manner that is most beneficial to the OWNER and CONTRACTOR, OWNER and CONTRACTOR may form a "Partnering Team", which will include the E/A, and any major Subcontractors. This partnering relationship will draw on the strength of all parties to identify and achieve mutual goals. The objectives of this partnering relationship are effective and efficient communication and Contract performance, which is intended to ensure that the Project is completed within budget, on schedule, and in accordance with the Drawings and Specifications and other Contract requirements. While the partnering relationship will be multilateral in makeup and participation will be totally voluntary, the OWNER and CONTRACTOR agree to cooperate and use reasonable good faith efforts to discuss and resolve any and all Project issues and disputes. Section 01100, Special Project Procedures and/or Section 01200, Project Meetings contain additional information regarding the intent of the partnering relationship and responsibilities of the entities entering into the partnering charter.

### **14. ROCIP REQUIREMENTS**

If the insurance on this Project will be under the Rolling Owner Controlled Insurance Program (ROCIP), the Bidder is directed to Section 00810, Supplemental General Conditions, Section 00820, Modifications to Bidding Requirements and Contract Forms, and the Project Safety Manual included with these contract documents for information and bidding requirements.

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The Insurance Cost Form, Section 00425A must be accurately completed and submitted with the Bid to indicate insurance removed from Base Bid and Alternates. CONTRACTOR shall remove from the Bid the cost of insurance for the CONTRACTOR and Subcontractors of all tiers working on site.

The Rolling Owner Controlled Insurance Program Information, Section 00425 B, Contractor Affidavit of Receipt and Provision of ROCIP Information and Subcontractor Affidavit of Receipt and Provision of ROCIP Information for subcontractor(s) of all tiers identified in the MBE/WBE Compliance Plan must be accurately completed and submitted by the certified low bidder as a post bid submittal. Subcontractor Affidavits must be submitted throughout the duration of the Contract as Subcontractor(s) are added.

### **15. SIGNATURE REQUIREMENTS**

The Bid and any subsequent supporting Bid documents and Contract must be executed in the Bidder's full name and legal entity status by an authorized representative of the Bidder. Accordingly, a partnership/joint venture must file its partnership/joint venture agreement, a corporation must file its articles and bylaws, a limited liability company must file its certificate of organization and article of organization and regulations, and a limited partnership must file not only limited partnership agreement and the certificate of limited partnership, but also the documentation for its general partner, and any Bidder must file a copy of any assumed name certificate, or such limited portion of such documents reasonably establishing signature authority.

### **16. CONTRACTOR EVALUATION**

The Owner will review and evaluate the Contractor's Work and performance on the Project and provide the Contractor with a written Contractor Evaluation Report in accordance with City of Austin Administrative Rule R161-13.37. Rule R161-13.37 provides an appeal process. <http://www.austintexas.gov/department/contract-management>

### **17. TEXAS ETHICS COMMISSION CERTIFICATE OF INTERESTED PARTIES DISCLOSURE FORM**

#### **17.1** Definitions:

**17.1.1** "Interested Party" – means a person who has a controlling interest in a Business Entity with whom the Owner contacts or who actively participates in facilitating the Contract or negotiating the terms of the Contract, including a broker, intermediary, adviser, or attorney for the Business Entity.

**17.1.2** "Business entity" - includes an entity through which business is conducted with a governmental entity or state agency, regardless of whether the entity is a for-profit or nonprofit entity. The term does not include a governmental entity or state agency.

**17.2** As a condition to entering the Contract, the Business Entity constituting the successful Bidder must provide a Texas Ethics Commission Certificate of Interested Parties Form to the Owner at the time the Business Entity/Bidder submits the signed Contract to the Owner in full compliance with the following requirements under which the successful Bidder shall:

**17.2.1** Go to the Ethics Commission's website ([www.ethics.state.tx.us](http://www.ethics.state.tx.us)),

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**17.2.2** Complete the "Interested Parties" information, in accordance with the requirements of the Texas Ethics Commission Rules published at Title 1, Part 2, Chapter 46, of the Texas Administrative Code and available on the referenced website,

**17.2.3** Include the City's contract identification number,

**17.2.4** Include a short description of the goods or services to be used by the City,  
and

**17.2.5** Indicate whether each interested party has a controlling interest in the business entity, is an intermediary in the contract for which the disclosure is being filed, or both.

**17.3** In accordance with the Commission Rules, the Certificate of Filing and completed Certificate of Interested Parties must be (i) printed, (ii) signed by an authorized agent of the business entity, and (iii) submitted to the City at the time of the submission of the signed contract to the City. The City then must notify the Ethics Commission in electronic format of receipt of the document within 30 days of contracting and the Commission will make the disclosure of interested parties available to the public on its website.

**END**