



**Amendment No. 1
of
Contract No. NC160000029
for
Postage Mailing System
between
Neopost USA, Inc.
The City of Austin**

1.0 The Contract is hereby amended as follows: Change name to Quadient, Inc. as requested and documented by the vendor:

	From	To
Vendor Name	Neopost USA Inc. Dba, Neopost Inc or Neopost Texas	Quadient, Inc.
Vendor Code (for City use only)	USP7160190	USP7160190
Vendor Federal Tax ID (FEIN)	<div style="background-color: black; width: 100px; height: 1.2em;"></div>	<div style="background-color: black; width: 100px; height: 1.2em;"></div>

2.0 All other terms and conditions of the Contract remain unchanged and in full force and effect.

BY THE SIGNATURE affixed below, this Amendment No. 1 is hereby incorporated into and made a part of the Contract.

Cindy Reyes

Digitally signed by Cindy
Reyes
Date: 2020.04.28
09:38:30 -05'00'

Cindy Reyes
Contract Management Specialist III
City of Austin, Purchasing Office

Date

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
AND
NEOPOST USA, INC. ("Contractor")
FOR
LEASE OF WTS-P TRACKING SYSTEM
MA 7500 NC160000029**

This Contract is between Neopost USA, Inc. having offices at 478 Wheelers Farm Rd., Milford, CT 06461 and the City, a home-rule municipality incorporated by the State of Texas, and is effective on the date executed by the City (Effective Date). Solicitation requirements are met by using Contractor's Texas Procurement and Support Services (TPASS) Contract No. 985-L1.

1.1 This Contract is composed of the following documents:

- 1.1.1 Texas Procurement and Support Services (TPASS) contract number 985-L1
- 1.1.2 This Document
- 1.1.3 Exhibit A, Supplemental Terms
- 1.1.4 Exhibit B, Neopost USA, Inc. Offer, dated September 1, 2016, including subsequent clarifications
- 1.1.5 Exhibit C, Non-Discrimination Certification

1.2 Order of Precedence. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 Texas Procurement and Support Services (TPASS) contract number 985-L1 as referenced in Section 1.1.1
- 1.2.2 This Document
- 1.2.3 Supplemental Terms as referenced in Section 1.1.3
- 1.2.4 The Contractor's Offer as referenced in Section 1.1.4, including subsequent clarifications

1.3 Quantity. Quantity of goods or services as described in Exhibit B.

1.4 Term of Contract. The Contract shall be in effect for an initial term of sixty (60) months, subject to the extension of the cooperative contract (as referenced in Section 1.1.1 above), approval of the Contractor and the City Purchasing Officer or his designee. Under Lease Provisions section B. Terms of the Lease, item 1. of the TPASS Contract 985-L1 this contract including all associated terms and conditions shall survive the expiration of 985-L1. The City reserves the right to transfer this Contract by amendment to future TPASS contracts that supersede TPASS Contract No. 985-L1, if the terms and conditions are favorable to the City.

1.5 Compensation. The Contractor shall be paid a total Not-to-Exceed amount of \$53,630.40 for the initial Contract term.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

NEOPOST USA, INC.

CITY OF AUSTIN

Kevin O'Connor

Printed Name of Authorized Person

Signature

VP, Marketing

Title:

9/12/2016

Date:

JONATHAN DALCHAU

Printed Name of Authorized Person

Signature

SENIOR BUYER SPECIALIST

Title:

9/13/2016

Date:

Exhibit A - Supplemental Terms

Exhibit B - Neopost USA, Inc. Offer dated September 1, 2016

Exhibit C - Non Discrimination Certification, Section 0800

This is pursuant to the modifications made to remove 'master agreement number' from the invoicing requirements. Single copy invoices are mailed or are available on myneopost.com.

Also removed from the insurance section, was the reference to thirty (30) days Notice of Cancellation. We will send out notice of termination (if applicable), and we'll send out updated COIs if appropriate. Additional changes will be mutually agreed upon.

**EXHIBIT A
SUPPLEMENTAL TERMS**

The following Supplemental Purchasing Provisions apply to this solicitation:

1. **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Caleb Ashby, Phone: (512) 697-2492, Email Address: C.Ashby@neopost.com. The City's Contract Manager for the engagement shall be Taylor Youngblood, Phone: (512) 974-3519, Email Address: taylor.youngblood@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.
2. **End of Lease Purchase of Equipment.** Upon termination of the lease, the City shall have the option, but is under no obligation, to purchase the equipment at fair market value.
3. **INSURANCE:** Insurance is required for this solicitation.
 - A. **General Requirements:** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.
 - i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
 - ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
 - iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
 - iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767
 - B. **Specific Coverage Requirements:** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.
 - i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
 - ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
 - (1) The policy shall contain the following provisions:
 - (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Contractor/Subcontracted Work.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.

**EXHIBIT A
SUPPLEMENTAL TERMS**

(d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.

(2) The policy shall also include these endorsements in favor of the City of Austin:

- (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
- (b) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage

iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.

(1) The policy shall include these endorsements in favor of the City of Austin:

- (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
- (b) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

4. INVOICES and PAYMENT:

A. Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall contain a unique invoice number, the purchase order or delivery order number, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor'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 Contractor. Invoices shall be mailed to the below address:

Invoices shall be emailed to: BSDAPInvoices@austintexas.gov or the billing address is below address:

	City of Austin
Department	Building Services
Attn:	Accounts Payable
Address	P.O. Box 1088
City, State Zip Code	Austin, TX 78767

B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

City of Austin, Texas
Section 0800
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Bid and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

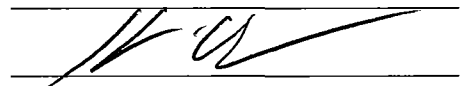
Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 12th day of September, 2016

CONTRACTOR
Authorized
Signature

Neopost USA, Inc.



Title

VP, Marketing

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all Deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE DELIVERABLES**: The Contractor will package Deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the Deliverables under reservation and no tender of a bill of lading will operate as a tender of Deliverables.
5. **TITLE & RISK OF LOSS**: Title to and risk of loss of the Deliverables shall pass to the City only when the City actually receives and accepts the Deliverables.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the Deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the Deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of Deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **PLACE AND CONDITION OF WORK**: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

10. WORKFORCE

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
 - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
 - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

- 11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

12. INVOICES:

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and Deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

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PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

13. PAYMENT:

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the Deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. delivery of defective or non-conforming Deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

- 14. TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

15. FINAL PAYMENT AND CLOSE-OUT:

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
 - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

16. SPECIAL TOOLS & TEST EQUIPMENT: If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. RIGHT TO AUDIT:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. The Contractor shall include section a. above in all subcontractor agreements entered into in connection with this Contract.

18. SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

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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:
- i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.
19. **WARRANTY-PRICE:**
- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.
 - B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
 - C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.
20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.
21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
- A. Recycled Deliverables shall be clearly identified as such.

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- B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
 - E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.
23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event

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that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.
30. **DELAYS:**
- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In

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the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. INDEMNITY:

A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
 - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
- ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

32. INSURANCE: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised March 2013).

A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

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- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
34. **NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the

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City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.

35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.
37. **CONFIDENTIALITY**: In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **PUBLICATIONS**: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.
39. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
40. **NO CONTINGENT FEES**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

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41. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
42. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
43. **INDEPENDENT CONTRACTOR:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
44. **ASSIGNMENT-DELEGATION:** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
45. **WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
46. **MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
47. **INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
48. **DISPUTE RESOLUTION:**
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as

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described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.
49. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
50. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.
51. **HOLIDAYS:** The following holidays are observed by the City:

<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
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.

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

53. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

54. **EQUAL OPPORTUNITY**

- A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
- B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

55. **INTERESTED PARTIES DISCLOSURE**

As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the successful Offeror. The Offeror is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

56. **BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)**

- A. Definitions. As used in this paragraph –
- i. "Component" means an article, material, or supply incorporated directly into an end product.
 - ii. "Cost of components" means -
 - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or



**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**



- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
- iii. "Domestic end product" means-
 - (1) An unmanufactured end product mined or produced in the United States; or
 - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
- iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
- v. "Foreign end product" means an end product other than a domestic end product.
- vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

Contract Details: # 985-L1

Search for items in this contract (/ex_search/false/contract_number/985~L1)

Number	985-L1
Description	Lease For Mail Equipment; Meters; Scales; Purchase Of Supplies
Category	TxSmartBuy
Type	Term
Start Date	11/1/2012
End Date	8/31/2017
Purchase Category Code (Agencies Only)	<p>PCC A</p> <p>Legal Cite: State agency mail operations are governed by state statute and administrative rules. Tex. Gov't Code Ann., Ch. 2176, Vernon 2000 & Supp. (2006); 1 Tex Administrative Code Sec. 117.31 (2006); See also Tex. Gov't Code Ann. Sec. 2113.103; General Appropriations Act, S.B. 1, 79th Leg., Art. IX, Sec. 6.15 (2005).</p>
Purchase Orders	<p>Only purchase orders issued through TxSmartBuy are eligible for contract pricing. The Contractor will not ship any products or provide related services until receipt of a Purchase Order generated by the TxSmartBuy system. In the specific instances described below, purchase orders entered through TxSmartBuy will be put on automatic hold pending the review by CPA.</p> <p>Note that Customers have the ability in TxSmartBuy to select the Lease Renewal or Lease Extension quote: A Customer may agree to a Lease Renewal with a Contractor after the initial lease term ends. At the end of the initial lease, a Customer may also decide to keep its existing equipment and agree to a Lease Extension with Pitney Bowes for a reduced price.</p> <p>This is a statewide contract and available for use by all eligible entities with special instructions for state agency orders placed within Travis County.</p> <p>Tiered Award:</p> <p>This contract was awarded using a tiered approach. There is a designated primary vendor, Neopost USA, and a secondary vendor, Pitney Bowes, Inc. State agencies and universities are required to utilize the primary vendor first.</p> <p>All state agencies seeking to utilize the secondary vendor must submit a request to the CPA via email to Email: joaquin.luna@cpa.state.tx.us (mailto:joaquin.luna@cpa.state.tx.us)</p> <p>for review and approval. Include requisition number in email. CO-OP members are not required to utilize the primary vendor first.</p> <p>State agency special instructions for mail equipment installed within Travis County:</p> <p>All state agencies located in Travis County are required to consult with CPA prior to purchasing, upgrading, or selling mail equipment per Tex. Gov't Code Ann. 2176.101 To expedite your purchase or upgrade mail equipment, please answer the questions on the General Mail Equipment Procurement Questionnaire (DOC) (http://www.window.state.tx.us/procurement/tools/proc_forms/MailEquipmentProcurementQuestionnaire.doc) Return the completed questionnaire via email to chris.christine@cpa.state.tx.us (mailto:chris.christine@cpa.state.tx.us) at CPA Mail Operations.</p>

NIGP Code (s)	208-83 420-66 600-08 600-63 600-67 600-68 600-71 600-77 600-80 600-83 780-78 924-05 924-40 985-54
CPA Contract Management	<p>Questions regarding contract management issues, price changes, amendments or other post-award concerns should be directed to:</p> <p>TPASS Contract Management Office (TCMO) Texas Comptroller of Public Accounts (CPA) Fax: (512) 936-0040  Email: tpass_cmo@cpa.state.tx.us (mailto:tpass_cmo@cpa.state.tx.us) Questions concerning technical specifications should be directed to:</p> <p>Joaquin Luna Strategic Sourcing Division Texas Comptroller of Public Accounts (CPA) (512) 463-0956  Email: joaquin.luna@cpa.state.tx.us (mailto:joaquin.luna@cpa.state.tx.us)</p> <p>985-L1 Mailing Equipment and Supplies, Special Instructions and Contract Details(pdf) (http://www.txsmartbuy.com/ShopFlow/Documents/Contract%20Attachments/985-L1 Special Instructions and Contract Details.pdf)</p> <p>985-L1 Pitney Bowes User Guide(pdf) (http://www.txsmartbuy.com/ShopFlow/Documents/Contract%20Attachments/985-L1-pitney-user-guide.pdf)</p> <p>985-L1 Neopost Sample Mailing Machines and Available Options and Supplies (pdf) (http://www.txsmartbuy.com/ShopFlow/Documents/Contract%20Attachments/985-L1-neopost-samp-mailg-machines-optns-supplies.pdf)</p> <p>985-L1 Neopost Quality & Comprehensive Training Program (pdf) (http://www.txsmartbuy.com/ShopFlow/Documents/Contract%20Attachments/985-L1-neopost-qualcomp-trng-prog.pdf)</p> <p>985-L1 Neo Post Customer Service Plan(pdf) (http://www.txsmartbuy.com/ShopFlow/Documents/Contract%20Attachments/985-L1-neopost-cust-svc-plan.pdf)</p> <p>985-L1 Neopost Accounting & Reporting Capabilities (pdf) (http://www.txsmartbuy.com/ShopFlow/Documents/Contract%20Attachments/985-L1-neopost-acctg-reptg.pdf)</p> <p>985-L1 Pitney Bowes Lease Extension Offer(pdf) (http://www.txsmartbuy.com/ShopFlow/Documents/Contract%20Attachments/985-L1 Pitney Bowes Lease Extension Offer.pdf)</p>

Contractors	<p>Payee ID No.: 1942388882500 Neopost USA, Inc. 478 Wheelers Farms Rd. Milford, Connecticut 06461 Contact: John Marin Phone: (512) 697-2493  E-mail: J.Marin@neopost.com (mailto:J.Marin@neopost.com)</p> <p>Payee ID No.: 10604950500 Pitney Bowes, Inc. 1 Elmcroft Road Stamford, Connecticut 06926 Contact: Lonnie Kennedy Phone: (512) 997-5511  E-mail: lonnie.kennedy@pb.com (mailto:Lonnie.Kennedy@pb.com)</p> <p>Pitney Bowes Remit To Address:</p> <p>Customers will make payment to Pitney Bowes at the following address: VID: 12013442871 Pitney Bowes Global Financial Services 20658 Stone Oak Parkway ste 104 San Antonio TX 78258</p>
Adding New Products to the Contract	<p>Following the contract award, additional products or services of the same general category that could have been encompassed in the award of this contract, and that are not already on the contract, may be added. TPASS customers are encouraged to request additional items by contacting the TPASS Contract Management Office.</p>
Delivery Delays by Contractor	<p>If delay is foreseen, Contractor shall give written notice to the Customer and must keep Customer advised at all times of status of order.</p> <p>Default in promised Delivery Days After Receipt of Order (ARO) without accepted reasons or failure to meet specifications authorizes the Customer to purchase goods and services of this contract elsewhere and charge any increased costs for the goods and services, including the cost of re-soliciting, to the Contractor.</p> <p>Failure to pay a damage assessment is cause for contract cancellation and/or debarment or removal of the contractor, as applicable, from the State Centralized Master Bidders List (CMBL).</p>
Compliant Products by Contractor	<p>Delivery does not occur until the Contractor delivers products, materials or services in full compliance with the specifications to Customer F.O.B. destination, unless delivery is specifically accepted, in whole or in part, by the Customer. Providing products, materials or services which do not meet all specification requirements does not constitute delivery.</p> <p>Customer reserves the right to require new delivery or a refund in the event that materials or products not meeting specifications are discovered after payment has been made.</p>
Purchase Order Cancellation	<p>The Customer may request that a Contractor cancel a specific line item or an entire purchase order. There shall be no fees charged for cancellation of an item and/or order prior to shipment by the Contractor. The cancellation must be processed through the TxSmartBuy system.</p>
Restocking Fee for Returned Products	<p>The Customer may request that a Contractor accept return of products already delivered. If the return is required through no fault of the Contractor, the Contractor may request a reasonable restocking charge. The Customer may pay a restocking charge if the CPA or Customer determines that the charge is justifiable. As a guideline, such charges shall not exceed 10%.</p>
Substitutions	<p>During the Contract term, the Contractor shall not substitute a product or brand unless the Contractor has obtained prior written approval from the CPA Contract Manager in coordination with the Customer. The Contractor must have written confirmation from the CPA Contract Manager of the substitution before making delivery.</p>

Contractor Performance	<p>Statewide Procurement Division (SPD), administers a vendor performance program for use by all customers per Texas Government Code (TGC), §2262.055, and 34 Texas Administrative Code (TAC), §20.108. The Vendor Performance relies on the customer's participation in gathering information on vendor performance. State agency customers shall report vendor performance on purchases of \$25,000 or more from contracts administered by CPA, or any other purchase of \$25,000 or more made through delegated authority granted by CPA (TAC 20.108), or purchases exempt from CPA procurement rules and procedures. State agencies are additionally encouraged to report vendor performance on purchases under \$25,000.</p> <p>Vendor Performance shall be reported through the CPA VENDOR PERFORMANCE TRACKING SYSTEM. (http://www.window.state.tx.us/procurement/prog/vendor_performance/)</p> <p>The purpose of the Vendor Performance Tracking System is to:</p> <ul style="list-style-type: none"> • Identify vendors that have exceptional performance • Aid purchasers in making a best value determination based on vendor past performance • Protect the state from vendors with unethical business practices • Provide performance scores in four measurable categories for the CMBL vendors • Track vendor performance for delegated and exempt purchases
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Contractors Information

VID: 1942388825

Contractor: Neopost USA, Inc.

Contact Name: John Marin

Email: j.marin@Neopost.Com

Phone: (512) 697-2493 


Address: 478 Wheelers Farms Road, Milford, CT 6461

VID: 10604950500

Contractor: PITNEY BOWES INC.

Contact Name: Lonnie Kennedy

Email: Lonnie.Kennedy@pb.com

Phone: (877) 213-7292 

Address: Pitney Bowes 1 Elmcroft Road Stamford, Connecticut 06926

[Texas.gov \(http://www.texas.gov/en/Pages/default.aspx\)](http://www.texas.gov/en/Pages/default.aspx) |
[Statewide Search from the Texas State Library \(https://www.tsl.state.tx.us/trail/index.html\)](https://www.tsl.state.tx.us/trail/index.html) |
[State Link Policy \(http://www.dir.texas.gov/pubs/pages/weblink-privacy.aspx\)](http://www.dir.texas.gov/pubs/pages/weblink-privacy.aspx) |
[Texas Homeland Security \(http://governor.state.tx.us/homeland\)](http://governor.state.tx.us/homeland) | [Texas Transparency \(http://www.texas Transparency.org/\)](http://www.texas Transparency.org/) |
[Report Fraud \(http://www.window.state.tx.us/fraud.html\)](http://www.window.state.tx.us/fraud.html)

Glenn Hegar, Texas Comptroller • [Window on State Government \(http://www.window.state.tx.us/\)](http://www.window.state.tx.us/) • [Contact Us \(http://www.window.state.tx.us/contact.html\)](http://www.window.state.tx.us/contact.html)

[Privacy and Security Policy \(http://www.window.state.tx.us/privacy.html\)](http://www.window.state.tx.us/privacy.html) |
[Accessibility Policy \(http://www.window.state.tx.us/accessibility.html\)](http://www.window.state.tx.us/accessibility.html) | [Link Policy \(http://www.window.state.tx.us/linkpolicy.html\)](http://www.window.state.tx.us/linkpolicy.html) |
[Public Information Act \(http://www.window.state.tx.us/pia.html\)](http://www.window.state.tx.us/pia.html) |
[Texas Veterans Portal \(http://veterans.portal.texas.gov/en/Pages/default.aspx\)](http://veterans.portal.texas.gov/en/Pages/default.aspx) |
[Compact with Texans \(http://www.window.state.tx.us/comptrol/compact/\)](http://www.window.state.tx.us/comptrol/compact/)

Mailing Equipment and Supplies, Contract #985-L1

Special Instructions and Contract Details

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SHIPPING INFORMATION

All shipping shall be F.O.B. destination to the location(s) specified on the purchase order which may include inside deliveries. Prices must include all shipping and handling fees unless stated otherwise.

The Contractor shall be responsible for the following shipping requirements:

Identification of Shipments

In addition to the complete destination address, each delivery must be clearly marked with the purchase order number. Each shipment must be accompanied by a packing slip.

Packaging and Labeling

All items shipped must be properly labeled, with weather resistant labeling, showing the brand name, package quantity, lot number (if applicable) and any other necessary identifying information.

Special Delivery Requirements

Customers may have specific, internal delivery rules and policies. These will be provided on each purchase order issued by the customer. The Contractor will be required to adhere to those requirements.

Hours of Delivery

Delivery shall be made during the hours of 8:00 am to 4:00 pm (CST) unless prior approval for after-hours delivery has been obtained from the Customer. In the event of any approval by the Customer for after-hours delivery, Contract may not invoice any additional charges for that delivery.

Delivery Schedule

Contractor shall deliver all equipment twenty (20) calendar days after receipt of order (ARO), unless an alternate timeframe is agreed to and specified on the Customer's purchase order.

Delivery Delays

If delay is foreseen, Contractor shall give written notice to the Customer and must keep Customer advised on the status of the order. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the Customer to purchase goods and services of this RFP elsewhere and charge any increased costs for the goods and services, including the cost of re-soliciting, to the Contractor. Failure to pay a damage assessment is cause for Contract cancellation and/or debarment or removal of the Contractor from the State's Centralized Master Bidders List (CMBL).

Late Delivery Fee

At the time of invoice payment, the Customer will have the option to deduct any accumulated late delivery fees prior to payment of the invoice. The Customer will have the option to charge the Contractor a fee of \$50 per business day per purchase order for late delivery. Late fees will not be assessed if the Contractor has obtained prior written approval for late delivery from the Customer.

MACHINE PERFORMANCE STANDARDS

- A. Each machine offered must process all size mail accepted by United States Postal Service (USPS) standards.
- B. Each machine offered must seal envelopes and provide a catcher tray.
- C. Each machine offered must work as technically designed with postage meters being proposed. Units proposed that do not allow for postage meter compatibility as provided will not be accepted.
- D. Each State of Texas Agency and field office that uses the Contract shall be provided, at no additional cost, an ad indicia that states:

OFFICIAL
BUSINESS
STATE OF TEXAS
PENALTY FOR
PRIVATE USE

MAILING EQUIPMENT SPECIFICATIONS

- 1. Mail size specifications:
 - a. Maximum 15" length minimum width 11 ½ for categories VI, VII, and VII
 - b. Maximum 13" length minimum width 10"
 - c. Maximum 12 ¾" length minimum 5"
 - d. Maximum 9 ½" width minimum 3 ½"
 - e. Maximum 3" flap depth minimum 1"
 - f. Maximum ¼" thickness minimum .007
- 2. Equipment to have automatic or semi-automatic feeder, sealer and meter to load, seal and affix postage to the mail in the same operation.
- 3. The State prefers to have auto on/off feature controlled by device that senses presence of mail.
- 4. Must have pressure sensitive automatic roll tape feature or adhesive strip tapes.
- 5. Must have adjustable wetness capability for envelope flaps for Categories VI, VII, and VII.
- 6. Must have disposable ink cartridge.
- 7. Must have thickness adjustment capability.
- 8. Must have tape sealer dispensers with visible sealer level.
- 9. Must have ink dispenser with low and out of ink indicators.
- 10. Mail processing system base electronically interfaced or integrated with scale and postage meter.
- 11. All units must be digital, USPS and Information Based Indicia Program (IBIP) compliant.
- 12. All units must operate on 110 Volt AC Power.

13. All units must be ENERGY STAR® compliant.
14. All units must have automatic date change, post-dating and zero postage in addition to manual postage imprinting capability.
15. All units must be new or refurbished (if requested by Customer).
16. There are eight (8) primary categories as listed below. All equipment must comply with the United States Postal Service (USPS) metering requirements. Reference USPS, Quick Service Guide 604c at <http://pe.usps.com/text/qsg300/Q604c.htm>

MAILING EQUIPMENT – CATEGORY I (MINIMUM 30 PIECES PER MINUTE)

MAILING EQUIPMENT – CATEGORY II (MINIMUM 65 PIECES PER MINUTE)

MAILING EQUIPMENT – CATEGORY III (MINIMUM 120 PIECES PER MINUTE)

MAILING EQUIPMENT – CATEGORY IV (MINIMUM 145 PIECES PER MINUTE)

MAILING EQUIPMENT – CATEGORY V (MINIMUM 175 PIECES PER MINUTE)

MAILING EQUIPMENT – CATEGORY VI (MINIMUM 200 PIECES PER MINUTE)

MAILING EQUIPMENT – CATEGORY VII (MINIMUM 240 PIECES PER MINUTE)

MAILING EQUIPMENT – CATEGORY VIII (MINIMUM 290 PIECES PER MINUTE)

WEIGHING SYSTEM SPECIFICATIONS

Equipment weighing systems must meet the following requirements as required by Customer:

1. Capable of handling USPS postcards, letters, flats, parcels and trifold and bifold mail pieces.
2. Maintaining an accuracy of within 0.1 ounce of the true value, with weight increments of 0.5 ounce between 0 and 70 pounds.
3. All weight measurements displayed as a digital readout.

POSTAGE METER SPECIFICATIONS

All equipment metering systems must meet the following requirements:

1. Capable of customer preset mail classes, e.g. Next Day Letters, Next Day Flats, Priority, Express.
2. Capable of adding new refill amounts.
3. Capable of user selection of multiple metering modes to include:
 - a. Selection of First Piece Weighing to allow the first piece of one or more stacks of mail pieces to be weighed and the same postage applied to all pieces in that lot.
 - b. Selection of Individual Piece Weighing which weighs each piece individually and applies the required postage for the weight of the individual mail piece
 - c. Selection of Seal and Count Only which does not apply postage.
4. Capable of following Sealing options:
 - a. Seal with flaps folded over envelope
 - b. Seal with flaps overlapping envelopes
 - c. Applying postage to envelope not requiring sealing or already sealed.

5. Capable of selecting and editing accounts.
6. Capable of changing between imprinted indicia and tape indicia.
7. Capable of providing meter reset through whatever method required by Customer placing each order and allowed by USPS.
8. Having displays for the following:
 - a. Amount of funds available on the meter
 - b. Amount of funds used on the meter
 - c. Total number of pieces metered
 - d. Current batch value
 - e. Current batch count
 - f. Operator identification

ACCOUNTING SYSTEM

1. If required by Customer, machines provided must have integrated postage accounting system with the capability of user established accounts and subaccounts and providing a minimum of the following reports:
 - a. Single day usage for one or more accounts and/or subaccounts
 - b. Monthly usage for one or more accounts and/or subaccounts
 - c. Annual usage for one or more accounts and/or subaccounts
 - d. Ad hoc adjustable dates usage for one or more accounts and/or subaccounts
2. Reports shall contain account name, identifier number, volume metered by class and postage information if required by Customer.
3. Accounting System must have the ability to add/edit accounts and/or subaccounts as required.

RATE CHANGES

All USPS postage rate changes are to update metering system through software download or other electronic means and must be included for the duration of the lease or ownership of the equipment.

ENGINEERING/SOFTWARE CHANGES

When a manufacturer of the equipment on Contract releases engineering or software changes at no cost to the general trade that improves the performance of the equipment bid, and while the equipment is still under lease, the Contractor must make the improvements to the equipment unless the Customer declines the improvements. Contractor must maintain and install equipment to include all released engineering changes at a current level at no increase in cost to the State. All safety enhancements must be installed per manufacturer's specifications without option.

MANUALS

Manuals containing operating and service instructions for the equipment shall be delivered with each unit. The manual(s) should be as detailed as possible outlining all operating instructions for each unit delivered. Necessary warnings and safety precautions shall also be included.

CONDITION OF PRODUCTS

Proposed and delivered products shall be new or refurbished (if requested by Customer), of current production, and in first class condition, and include the manufacturer's standard equipment and accessories. Containers must be suitable for shipment and storage.

Refurbished equipment must be certified and clearly noted that it is a refurbished product and must include warranty same as provided for new equipment.

All parts not specifically mentioned which are necessary for the unit to be complete and ready for operation or which are normally furnished as standard equipment will be furnished by the Contractor and included in the lease price. All parts will conform in strength, quality and workmanship to the accepted industry standards.

Contractor guarantees the equipment to be first quality grade in the field and that equipment offered has previously been sold in commercial trade. Contractor further guarantees that product offered is or was of normal production and not a special production item. Refurbished supplies are prohibited.

WARRANTY REQUIREMENTS

Purchased equipment must include at least a standard one year warranty.

MAINTENANCE/SERVICE

Contractor must provide a toll-free help desk phone number and customer service web system.

Neopost USA, Inc.: 1- 800-636-7678 [option 1 for service, option 2 for customer service or postage on call questions]. Customer service website: <http://neopostinc.com/>

Pitney Bowes, Inc.: 1-800-522-0020 for service/support. Customer service website: https://www.pb.com/bv2was/LoginHome.go?lang=en&country=US&request_locale=en_US

1. All broken or defective parts not caused by and directly due to the fault or negligence of the Customer and all necessary machine adjustments occasioned by such defective or broken parts shall be covered by the Contractor during the term of the lease. The Contractor agrees to promptly repair or replace any such parts, or make any such adjustments, on a one-for-one basis without additional cost to the Customer. Contractor will be responsible for pick up and/or delivery of units that require service.

2. While a unit is under a lease agreement, all rate changes and software updates shall be included.
3. Service response time for repair calls on leased units shall not exceed four business hours in urban areas or eight business hours in rural or remote areas if the machine is inoperable. The definition of urban is built on classifications of census blocks established in the 2010 National Census. An urban area is any area of census blocks with a population density of 1,000 people or more per square mile combined with any surrounding census blocks with densities of at least 500 people per square mile. Anything outside an urban area will be considered rural. Service is to be performed during normal working hours, 8:00 am to 5:00 pm (local time), Monday through Friday. Maintenance services must be performed by fully trained and qualified technicians.

LEASE PROVISIONS

Each Customer will be authorized to lease equipment under the Contract by issuance of a purchase order for the term of the lease. The Contractor's lease agreement form will not be used since the Contract and the purchase order will constitute the entire and complete agreement. No signatures will be solicited from the Customer at any time by the Contractor concerning equipment or software leased from this Contract.

- A. Risk of Loss or Damage: The Customer shall be relieved from all risks of loss or damage to equipment leased during the period of transportation, installation, and during the entire time the equipment is in the possession of and being used by the Customer, except when loss or damage is directly due to the fault or negligence of the Customer.
- B. Terms of the Lease:
 1. The Contractor shall lease to the Customer the equipment described on the purchase order for a period of 36, 48 or 60 months. The lease shall continue in force even after the termination of the Contract under which the lease was accepted. The terms and conditions of this Contract will remain in effect throughout the term of the lease even if the lease term continues beyond the termination of this contract (unless and until the Customer terminates the lease).
 2. Lease agreements shall be effective on the date of acceptance of the equipment. The date of acceptance is that date on which the equipment is installed at the agreed upon Customer location, the equipment is certified ready for use by the Contractor and accepted by the Customer as installed and in good working order. The confirmation of equipment acceptance shall be made by the Customer in writing. The Customer shall state the acceptance date on their written confirmation.
 3. Leases shall terminate upon completion of the specified lease term as defined by the Customer's written statement of acceptance date.

4. Upon mutual agreement with the Contractor, the Customer shall have the option to continue leasing the equipment for the same term and rate as the current lease by giving 30 days written notice prior to the end date of the initial lease provided the following conditions are met:
 - a. Prices are equal to or below that specified for like equipment available on State Contract.
 - b. Terms and conditions of the extension must be identical as those of the initial lease.
 - c. Customer may extend lease up to term of the initial lease period. During the extended lease, the Customer may cancel the lease, without cause or penalty, upon 60 days written notice to the Contractor.
5. The Customer will not pay installation or removal charges. Any such charges must be included in the Proposal pricing. It is the sole responsibility of the Contractor to install and remove the equipment from the premises. Equipment must be removed within ten (10) calendar days. The Customer will not be responsible for any damages after this time period.
6. Relocating equipment within the same building shall be performed by the Contractor at no charge. Relocation of equipment within the same complex shall be done at no charge unless the equipment must be trucked to another building – a standard industry charge is allowed and payable under this Contract if a truck is necessary. The Contractor owns the equipment and is responsible for the equipment at all times.
7. For the purpose of this Contract, the following definitions shall apply:
 - a. 36 Month Lease: A 36 consecutive month equipment plan that is not a lease purchase plan which shall terminate on the ending date of the 36 month period as defined above. No termination notice shall be required by either party if the full lease period is uninterrupted.
 - b. 48 Month Lease: A 48 consecutive month equipment plan that is not a lease purchase plan which shall terminate on the ending date of the 48 month period as defined above. No termination notice shall be required by either party if the full lease period is uninterrupted.
 - c. 60 Month Lease: A 60 consecutive month equipment plan that is not a lease purchase plan which shall terminate on the ending date of the 60 month period as defined above. No termination notice shall be required by either party if the full lease period is uninterrupted.

PAYMENT

Payment will be processed upon the satisfactory completion of delivery, installation, training and acceptance.

Payment terms of each lease, may be monthly, quarterly, semi-annually or annually at the Customer's option.

NEOPOST USA, INC. REMIT TO ADDRESS

Customers will make payments to Neopost, USA, Inc. at the following:

VID [19423888825](#)

Neopost USA, Inc.

478 Wheelers Farms Rd.

Milford, CT 06461

PITNEY BOWES, INC. REMIT TO ADDRESS

Customers will make payments to Pitney Bowes at the following:

VID 12013442871

Pitney Bowes Global Financial Services

PO Box 371887

Pittsburg PA 15250-7887

CANCELLATION OR FUNDING OUT

1. Any part of the lease may be cancelled for cause under any of the following circumstances:
 - a. The Contractor fails to make delivery of goods or services as specified in this Contract.
 - b. The Contractor fails to perform any of the provisions of this Contract.
 - c. Equipment fails to perform as represented by Contractor.
2. If cancellation should occur, the awarded Contractor shall refund, in full, any unused portion of the prepaid lease payment.

APPROPRIATIONS

All obligations of the CPA and Customers are subject to the availability of legislative appropriations and, for Customers expending federal funds, to the availability of the federal funds applicable to the Contract. The CPA and the Customers will use all reasonable efforts to ensure that such funds are available. The Contractor agrees that if future levels of funding for the CPA or a Customer are not sufficient to continue operations without any operational reductions, the CPA or the Customer, in its discretion, may terminate the Contract or a pending order under the Contract, either in whole or in part. In the event of such termination, the CPA or the Customer will not be considered to be in default or breach under the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination. The

CPA and the Customer shall make best efforts to provide reasonable written advance notice to the Contractor of any such Contract or order termination. In the event of such a termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination, either on that particular order if an order is being terminated, or the Contract, if the Contract is being terminated. The CPA or the Customer shall be liable for payments limited only to the portion of work the CPA or the Customer authorized in writing and which the Contractor has completed, delivered to the CPA or Customer, and which has been accepted by the CPA or Customer. All such work shall have been completed, per the Contract requirements, prior to the effective date of termination.

LIQUIDATED DAMAGES

The Customer shall notify Contractor in writing, for any default specified herein, and such liquidated damages shall be paid by Contractor within thirty (30) calendar days of the Customer notice. The Contractor's failure to pay the assessed liquidated damages within the designated time frame may be deemed by the state as a breach of Contract.

Liquidated damages for specific instances of noncompliance are:

1. Failure to meet response times for requested repair service calls within four business hours in urban areas and eight business hours in rural areas if the machine is inoperable - one hundred dollars (\$100) per hour.
2. Failure to remove equipment within ten (10) calendar days of a written request – seventy-five (\$75) dollars per day.
3. Failure to have a fully functional toll-free help desk phone number available at implementation - one thousand dollars (\$1,000.00) per day.
4. Failure of the toll-free help desk or customer service web system to be fully functional for a period of three (3) consecutive hours or greater - one hundred dollars (\$100) per hour beyond the three consecutive hours.

Item Detail: Neopost, IDS4CRDETHN-N, MC55 4 Slot
Ethernet Cradle , 60-Month Lease
Contractor: Neopost USA, Inc.
Contract: 985-L1
Min. Order Quantity: 60
Contract Award Level: 1

Order Total: \$53,630.40

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