



Amendment No. 6
of
Contract No. NA140000133
for
Property, Boiler and Machinery Insurance and Loss Prevention Services
between
Marsh USA Inc. D/B/A Marsh Wortham
and the
City of Austin

- 1.0 The City hereby exercises the extension option for the above-referenced contract. Effective October 1, 2019, to September 30, 2020. Zero (0) options remain
- 2.0 The total contract amount is increased by \$6,383,578.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 10/01/14 – 09/30/15	\$3,150,000.00	\$3,150,000.00
Amendment No. 1: Option 1 10/01/15 – 09/30/16	\$3,622,500.00	\$6,772,500.00
Amendment No. 2: Option 2 10/01/16 – 09/30/17	\$4,165,875.00	\$10,938,375.00
Amendment No. 3: Option 3 10/01/16 – 09/30/17	\$4,790,756.00	\$15,729,131.00
Amendment No. 4: Option 4 – Extension 10/01/2018 – 09/30/2019	\$5,550,937.00	\$21,280,068.00
Amendment No. 5: Name Change from John L. Wortham & Son LP to Marsh USA Inc.	\$0.00	\$21,280,068.00
Amendment No. 6: Option 5 – Extension 10/01/2019 – 09/30/2020	\$6,383,578.00	\$27,663,646.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature & Date: _____

Printed Name: George Z. Adkins
Authorized Representative

Marsh USA Inc.
D/B/A Marsh Wortham
PO Box 1388
Houston, TX 77251-1388

Signature & Date: _____

Cyrenthia Ellis
City of Austin
Purchasing Office



**Amendment No. 5
of
Contract No. NA140000133
for
Property, Boiler, and Machinery Insurance and Loss
Prevention Services
between
John L. Wortham & Son LP
Dba Wortham Insurance & Risk Management
and the
The City of Austin**

1.0 The Contract is hereby amended as follows: Change name to **Marsh USA Inc. dba Marsh Wortham** as requested by the Contractor:

	From	To
Vendor Name	John L. Wortham & Son LP Dba Wortham Insurance & Risk Management	Marsh USA Inc. Dba Marsh Wortham
Vendor Code (for City use only)	WOR7073730	MAR8309722
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. 5 is hereby incorporated into and made a part of the Contract.

Linell Goodin-Brown
Contract Management Supervisor II
City of Austin, Purchasing Office

Date 10-31-18



Amendment No. 4
of
Contract No. NA14000133
for
AE Property Insurance
between
John L. Wortham & Son, LP
dba Wortham Insurance & Risk Management
and the
City of Austin

- 1.0 The City hereby exercises the extension option for the above-referenced contract. Effective October 1, 2018, to September 30, 2019. One remaining option.
- 2.0 The total contract amount is increased by \$5,550,937.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 10/01/2014 – 09/30/2015	\$3,150,000.00	\$3,150,000.00
Amendment No. 1: Option 1 - Extension 10/01/2015 – 09/30/2016	\$3,622,500.00	\$6,772,500.00
Amendment No. 2: Option 2 - Extension 10/01/2016 – 09/30/2017	\$4,165,875.00	\$10,938,375.00
Amendment No. 3: Option 3 - Extension 10/01/2017 – 09/30/2018	\$4,790,756.00	\$15,729,131.00
Amendment No. 4: Option 4 - Extension 10/01/2018 – 09/30/2019	\$5,550,937.00	\$21,280,068.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature & Date:

Handwritten signature of George Adkins in black ink.

09/06/2018

Printed Name: George Adkins
Authorized Representative

John L. Wortham & Son, LP
DBA Wortham Insurance & Risk Management
PO Box 1388
Houston, TX 77251-1388
(713) 345-1295

Signature & Date:

Handwritten signature of Cyrenthia Ellis in black ink, dated 9/7/18.

Cyrenthia Ellis
Procurement Manager

City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 3
of
Contract No. NA14000133
for
AE Property Insurance
between
Wortham Insurance and Risk Management
and the
City of Austin

- 1.0 The City hereby exercises the extension option for the above-referenced contract. Effective October 1, 2017, to September 30, 2018. Two remaining options.
- 2.0 The total contract amount is increased by \$4,790,756.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 10/01/14 – 09/30/15	\$3,150,000.00	\$3,150,000.00
Amendment No. 1: Option 1 10/01/15 – 09/30/16	\$3,622,500.00	\$6,772,500.00
Amendment No. 2: Option 2 10/01/16 – 09/30/17	\$4,165,875.00	\$10,938,375.00
Amendment No. 3: Option 3 10/01/17 – 09/30/18	\$4,790,756.00	\$15,729,131.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature & Date:  9/6/2017

Printed Name: George Adkins Managing Director
Authorized Representative

Signature & Date:  9/28

Danielle Lord, Procurement Manager
City of Austin
Purchasing Office

Wortham Insurance and Risk Management
PO Box 1388
Houston, TX 77251-1388



Amendment No. 2
of
Contract No. NA14000133
for
AE Property Insurance
between
Wortham Insurance and Risk Management
and the
City of Austin

- 1.0 The City hereby exercises the extension option for the above-referenced contract. Effective October 1, 2016, the term for the extension option will be October 1, 2016 to September 30, 2017 and there are three remaining options.
- 2.0 The total contract amount is increased by \$4,165,875.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 10/01/14 – 09/30/15	\$3,150,000.00	\$3,150,000.00
Amendment No. 1: Option 1 10/01/15 – 09/30/16	\$3,622,500.00	\$6,772,500.00
Amendment No. 2: Option 2 10/01/16 – 09/30/17	\$4,165,875.00	\$10,938,375.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature & Date:

Handwritten signature of George Adkins in blue ink.

8/2/2016

Printed Name: George Adkins
Authorized Representative

Signature & Date:

Handwritten signature of Shawn Willett in blue ink, dated 9/8/16.

Shawn Willett, Deputy Purchasing Officer
City of Austin
Purchasing Office

Wortham Insurance and Risk Management
PO Box 1388
Houston, TX 77251-1388



Amendment No. 1
of
Contract No. NA14000133
for
AE Property Insurance
between
Wortham Insurance and Risk Management
and the
City of Austin

- 1.0 The City hereby exercises the extension option for the above-referenced contract. Effective October 1, 2015, the term for the extension option will be October 1, 2015 to September 30, 2016 and there are four remaining options.
- 2.0 The total contract amount is increased by \$3,622,500.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 10/01/14 – 09/30/15	\$3,150,000.00	\$3,150,000.00
Amendment No. 1: Option 1 10/01/15 – 09/30/16	\$3,622,500.00	\$6,772,500.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above referenced contract.

Signature & Date:  9/24/2015

Printed Name: George Adkins
Authorized Representative

Signature & Date: 

Mark Walsh, IT Data Architect
City of Austin
Purchasing Office

Wortham Insurance and Risk Management
PO Box 1388
Houston, TX 77251-1388



Financial and Administrative Service Department
Purchasing Office
PO Box 1088, Austin, Texas, 78767

September 17, 2014

The City of Austin has approved the award and execution of a contract with your company for property, boiler, and machinery insurance and loss prevention services in accordance to the solicitation PAX0117.

Project Name:	Property, Boiler, and Machinery Insurance and Loss Prevention Services
Contractor Name:	JOHN L WORTHAM & SON, LP dba WORTHAM INSURANCE & RISK MANAGEMENT
Contract Number:	NA140000133
Contract Amount:	\$3,150,000.00
Contract Period:	10/01/2014 – 09/30/2015
Extension Options:	Five 12-month options
Requisition Number:	8100 14051400347
Solicitation Number:	PAX0117
Agenda Item Number:	48
Council Approval Date:	08/28/2014

A copy of the contract has been attached.

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person above.

Sincerely,

Sai Xoomsai,
Purchasing Office

**CONTRACT BETWEEN THE CITY OF AUSTIN (“City”)
AND
Wortham Insurance and Risk Management (“Contractor”)
for
Austin Energy Property and Boiler and Machinery Insurance**

The City accepts the Contractor’s Offer (as referenced in Section 1.1.3 below) for the above requirement and enters into the following Contract.

This Contract is between Wortham Insurance and Risk Management having offices at 2727 Allen Parkway, Wortham Tower, 24th Floor, Houston, Texas 77019-2189 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City (“Effective Date”).

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number Request for Proposal PAX0117.

1.1 This Contract is composed of the following documents:

- 1.1.1 This Contract
- 1.1.2 The City’s Solicitation, Request for Proposal, PAX0117 including all documents incorporated by reference
- 1.1.3 Wortham Insurance and Risk Management Offer, dated July 14, 2014, including subsequent clarifications

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 This Contract
- 1.2.2 The City’s Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference
- 1.2.3 The Contractor’s Offer as referenced in Section 1.1.3, including subsequent clarifications.

1.3 Term of Contract. The Contract will be in effect for an initial term of twelve (12) months and may be extended thereafter for up to five (5) additional twelve (12) month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee. See the Term of Contract provision in Section 0400 for additional Contract requirements. The initial policy period shall begin on October 1, 2014.

1.4 Compensation. The Contractor shall be paid a total not-to-exceed amount of \$3,150,000 for the initial Contract term, with five (5) twelve (12) month extension options in estimated amounts not-to-exceed \$3,622,500 for the first extension option, \$4,165,875 for the second extension option, \$4,790,756 for the third extension option, \$5,550,937 for the fourth extension option, and \$6,383,578 or the fifth extension option, for a total contract amount not-to-exceed \$27,663,646.

1.5 **Quantity of Work.** There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order

1.6 **Clarifications and Additional Agreements.** The following are incorporated into the Contract.

1.6.1 Contractor's Proposal, Page 27, Part IV-Ancillary Services, Section B. Jurisdictional Boiler Inspections, the following provision is hereby deleted in its entirety:

Refer to the Appendix for a sample contract between ARISE and City of Austin (Doc #50101803v1)

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.

**WORTHAM INSURANCE AND RISK
MANAGEMENT**

George Z. Adkins

Printed Name of Authorized Person



Signature

Managing Director

Title:

September 17, 2014

Date:

CITY OF AUSTIN

Yolanda Miller

Printed Name of Authorized Person



Signature

Deputy Purchasing Officer

Title:

9/17/14

Date:

July 14, 2014

Response to Request for Proposal for Austin Energy



Solicitation Number: PAX0117
Property and Boiler & Machinery Insurance

Wortham



Insurance • Risk Management • Benefits

**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

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

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

10. WORKFORCE:

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

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

12. INVOICES:

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

**CITY OF AUSTIN
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.

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

- 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.

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

- 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

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

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 49. 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

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

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

31. INDEMNITY:

A. Definitions:

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

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

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

A. General Requirements.

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

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

- 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, facsimile, email, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
35. **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

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

Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.

37. **CONFIDENTIALITY:** In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **PUBLICATIONS:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.
39. **ADVERTISING:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
40. **NO CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
41. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
42. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty

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

thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

43. **INDEPENDENT CONTRACTOR:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
44. **ASSIGNMENT-DELEGATION:** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
45. **WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
46. **MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
47. **INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
48. **DISPUTE RESOLUTION:**
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the

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

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.

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.

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

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

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

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS:** (reference paragraph 5 in Section 0200)

- A. All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by ten (10) business day prior to the Solicitation Due Date to Sai Xoomsai Purcell at sai.xoomsai@austintexas.gov.
- B. Any material information given to one Proposer concerning a Solicitation will be furnished as an Addendum to all Proposers who have been issued a Solicitation. Any explanation, clarification, interpretation or change to the Solicitation made in any other manner is not binding upon the City, and Proposers shall not rely upon such explanation, clarification, interpretation or change. Oral explanations or instructions given before the award of the Contract are not binding.
- C. **Pre-Proposal Conference:** The City will hold a pre-proposal conference at **9:30 a.m. on Wednesday, June 25, 2014**, at One Texas Center, 505 Barton Springs Road, 6th floor, Main Conference Room, Human Resources Department.
- D. **Physical Property Inspections:** Austin Energy will provide a guided physical inspection tour **ONLY to Decker Power Plant on June 18th, 9:00 am, local time and Sand Hill Power Plant on June 19th, 9:00 am, local time.** Proposers wishing to participate in the inspection tour must contact **Sai Xoomsai Purcell at sai.xoomsai@austintexas.gov by 3:00 p.m. on June 17, 2014.** Requests for inspections other than on these days will not be accepted.

2. **INSURANCE:** (reference paragraph 32 in Section 0300).

- A. The Certificate of Insurance, and updates, shall be mailed to the following address:

Attn: RFP PAX0117
City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767

B. The following changes are made to the standard Insurance requirements:

(i) **Insurance Agents/Brokers Errors and Omissions Insurance.** The Contractor shall provide coverage, at a minimum limit of \$5,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.

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

3. **TERM OF CONTRACT:**

- A. The Contract shall be in effect for an initial term of 12 months and may be extended thereafter for up to 5 additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee. **The initial policy period shall begin on October 1, 2014.**

The Risk Management Division updates Austin Energy property values annually. Historically, this annual update has occurred between March and May. The updated values are submitted to the carrier in June and the carrier shall provide a renewal quote for receipt by City no later than August 1st of each year.

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

- B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).
- C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above.
- D. Prices are firm and fixed for the first 12 months. Thereafter, price changes are subject to the Economic Price Adjustment provisions of this Contract.

4. **INVOICES and PAYMENT:** (reference paragraphs 12 and 13 in Section 0300)

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

Invoices shall be mailed to the below address:

	City of Austin
Department	Human Resources
Attn:	Leslie Milvo
Address	505 Barton Springs Rd, Suite 600
City, State Zip Code	Austin, TX 78704

- 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.

5. **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING:**

- A. On November 10, 2011, the Austin City Council adopted Ordinance No. 20111110-052 amending Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the Authorized Contact Person in the Solicitation as the contact for questions and comments regarding the Solicitation.
- B. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
- C. If an Offeror has been disqualified under this article more than two times in a sixty (60) month period, the Purchasing Officer shall debar the Offeror from doing business with the City for a period not to exceed three (3) years, provided the Offeror is given written notice and a hearing in advance of the debarment.
- D. The City requires Offerors submitting Offers on this Solicitation to provide a signed Section 0810, Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit, certifying that the Offeror has not

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at: <http://www.ci.austin.tx.us/edims/document.cfm?id=161145>

6. **INTERLOCAL PURCHASING AGREEMENTS:** (applicable to competitively procured goods/services contracts).

- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.
- B. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.

38. **CONTRACT MANAGER:** The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Leslie Milvo, Risk Manager, Human Resources Department

505 Barton Springs Road, Suite 600, Austin, Texas 78704

Phone: (512) 974-3245

Leslie.milvo@austintexas.gov

*Note: The above listed Contract Manager is not the authorized Contact Person for purposes of the **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING Provision** of this Section; and therefore, contact with the Contract Manager is prohibited during the no contact period.

**PURCHASING OFFICE
SCOPE OF WORK
SOLICITATION NUMBER: PAX0117
AUSTIN ENERGY PROPERTY AND BOILER AND MACHINERY INSURANCE**

1.0 PURPOSE

The City of Austin, hereinafter referred to as the City, is seeking proposals from brokers, agents and insurers who are experienced and qualified in providing insurance and ancillary services to large, complex electric utility property and boiler and machinery accounts with values in excess of one billion dollars. **The coverage offered in this proposal shall be effective on October 1, 2014.**

2.0 BACKGROUND

2.1 General Risk Management Information

The Risk Management Division, at the direction of the City Council through an Executive Directive, developed a Risk Management Manual. The intent of this manual is to provide approved safety guidelines to ensure standardization in the promulgation of Department Property Conservation Programs. The Manual addresses emergency planning, loss prevention measures, protection systems, inspections, training, preventive maintenance, and property loss reporting.

Austin Energy (AE) has a staff of safety professionals and has established many Standard Operating Procedures to ensure the safe operation of machinery and equipment.

The City has also established an Office of Homeland Security and Emergency Management. When large natural disasters occur, this office coordinates the activities of many different organizations within the area in order to protect the property and citizens and to minimize the impact of losses.

The Risk Management Division has a full time Risk Analyst position to oversee communication between the insurance carrier and all departments and to aid in timely responses to all recommendations. Austin Energy also has a Risk Analyst designated a single point of contact to facilitate inspections, compile underwriting data, aid in loss adjusting, and to respond to all questions and recommendations from the carrier.

2.2 Austin Energy Risk Management Information

The Public Utility Commission establishes the service area for AE. The service area encompasses 206 square miles within the city limits and an additional 231 square miles of surrounding Travis and Williamson Counties.

Location	Year Installed	Operational Capacity
Decker Plant Natural Gas, Emergency Diesel Oil		
Unit #1	1970	325 MW
Unit #2	1977	405 MW
Gas Turbines (4)	1988	200 MW
Sand Hill Plant		
Units 1 - 4 Gas Turbines	2001	180 MW
Unit 5 Combined Cycle	2004	300 MW
Units 6 & 7 Gas Turbines	2010	90 W

**PURCHASING OFFICE
SCOPE OF WORK
SOLICITATION NUMBER: PAX0117
AUSTIN ENERGY PROPERTY AND BOILER AND MACHINERY INSURANCE**

2.3 Power Plant Information and Maintenance:

Power Production strives to maintain equipment in a condition that minimizes forced outages and maximizes unit output, efficiency, and safety. The plants are heavily loaded in the months of June-September; the primary objective is to attain 100% availability during those months. Since the plants are not base loaded, the fall and spring months provide an opportunity to take planned maintenance outages and perform the heavier maintenance.

Significant investments are made each year in non-destructive examinations, which may include evaluating the condition of high-energy piping, boiler tubes and headers, vessels, turbine components, large fans etc. Scope of work for inspections is generally determined by referring to the Generation Reliability Improvement Program (GRIP), guidelines established in the early 90's when Aptech Engineering was contracted to assist in developing a plan to improve equipment reliability and extend unit life. The plan and documented results from previous inspections guide the predictive scope of maintenance outages. Results are used to identify any immediate repairs needed and to plan for future maintenance activities where applicable.

The remainder of the maintenance outage scope is focused on corrective, preventive and calibration activities. That scope is derived from elapsed time, operator input, performance test results, known deficiencies and priority.

Non-outage maintenance activities occur throughout the year and are driven by operator input/work orders, elapsed time, condition evaluations and priority. A significant amount of the activities are preventive and predictive. A Computerized Maintenance Management System is employed to track work orders, schedule work and document work results. Transformer testing procedures are strictly followed and have been enhanced over the past 10 years along with the frequency and quality of testing of all transformers.

The Maintenance group consists of qualified staff with skills in welding, mechanics, instrumentation, and control, welding, planning, and insulating. They are well trained and perform at high skill levels. There is a continuous investment in employee development, providing off site and on site training opportunities.

Power Production utilizes a proactive maintenance approach with predictive and preventive maintenance combined with appropriate corrective maintenance to maximize the reliability of our generation units.

2.4 Electric Utility Fire Protection Upgrades:

Fire protection upgrades have been installed at all plants. Numerous types of fire protection systems have been installed at both plants. Wet pipe and dry pipe sprinkler systems have been added to protect the Turbine-Generator bearings. Hydrogen Seal Oil Units, Boiler Feed pumps, Cable Spread areas, and oil storage areas. Fire detection alarm systems have been added to the various outlying buildings within the plant confines that will alarm back to the "24/7" manned power plant Control Rooms.

At Decker, a fire detection system was added to the Gas Turbine Generator enclosures and control modules. A deluge spray system is operational on the Decker boiler burner fronts and a gaseous (FM-200) fire suppression system is installed in the Communication Room.

2.5 Engineering Surveys:

Engineering surveys have been conducted for Austin Energy properties. Copies of engineering surveys are not included within this RFP. Details regarding maintenance, protection, housekeeping and state of equipment at specific locations is best obtained during the guided physical inspection tours offered on **June 3, 2014 at 9 am, local time.(Refer to 0600 #1 C).**

**PURCHASING OFFICE
SCOPE OF WORK
SOLICITATION NUMBER: PAX0117
AUSTIN ENERGY PROPERTY AND BOILER AND MACHINERY INSURANCE**

Thermography Testing is performed on boilers, stacks and electrical equipment. Electrical surveys are performed on an annual basis, on the mechanical side they are performed every 3-4 months and some are performed before and after scheduled outages and also by request. High-end cameras are operated by AE employees with level 1 and level 2 certifications. The images are entered into a (WORD) template with all required information for future reference and sent to each respective plant in a PDF format adequate for emailing. These images are used for work identification, troubleshooting, and a safety standpoint at all power plants and the cooling district side.

Infrared Testing is conducted at substations and power plants. Electrical and exhaust stacks surveys are performed annually, boilers on a quarterly basis. Each plant receives electronic copies of the reports and it is also kept on a secure AE server. AE overlaps Infrared testing to main, auxiliary and station service transformers and feeders for each site. Power Production does not perform these tasks in substations. Electric Service Delivery has a crew for those specific tasks. The corrective actions on issues discovered are usually performed in house. There are some discrepancies identified during a scheduled outage that may be corrected by a contractor in certain cases, such as when performing boiler work. Upon completion and after some on line time, there are follow-up thermal surveys to achieve a new baseline and to inspect contactors' completed repairs. In the MMS most tasks have a reference or documentation submitted by a plant scheduler / analyst.

Oil Analysis is conducted on a quarterly basis only on the Main Power transformer on Unit 5 and the Generation Step Up and Auxiliary Transformers for Units 1-4 and 6&7 at Sand Hill. The samples are drawn by plant personnel and sent to a contractor for analysis. Some testing of other auxiliary transformers is done on a periodic basis. The samples are drawn by Electric Service Delivery (ESD) personnel and sent to a contractor. ESD initially receives the results and will flag any problems. They are then sent to the plant to be reviewed by AE personnel. AE also has a continuous gas-in-oil analysis system installed on Unit 5 MPT.

AE has continuous vibration monitoring on all turbines at Sand Hill and there are trips for each unit based on vibration. The portable vibration collection system is an Entek based program. The data collector is uploaded from the server with a skeleton form database specific to each route. Plant, unit, and classification of rotating equipment organize this database. The data is obtained on each individual bearing of these motor systems at each site.

The critical equipment at AE sites are industrial rotating equipment, which are operated to allow units to be on line to produce a product. If a critical unit fails, the unit will be taken off-line or operated at reduced load. These are checked on a 30-day targeted cycle dependent upon unit availability. There are essential pieces of industrial equipment that are needed to operate a unit, but with a spare usually available. If for any reason an essential piece has failed or is in maintenance then the single essential piece has in many cases become more related to a critical unit at that time. These are checked on a 90-day targeted cycle dependent upon unit availability. The vibration level from each data point is collected (example, a four bearing machine has 12 data points) and is downloaded to a PC then backed up to the server after an entire route is completed. AE interprets the raw data in order to initiate a solution process only if any of the machines checked indicate a problem. The machines in question are identified and reported and analysis performed as necessary. Some vibration analysis tasks are also performed on stationary equipment such as boilers, piping and foundations.

Decker Power Plant- criticals-115, essentials-107
Sand Hill Power Plant-criticals-129, essentials-60
Domain Cooling District-criticals -34, essentials-24
District Cooling 1-criticals- 14, essentials-16
District Cooling 2-critical -14, essentials -14

**PURCHASING OFFICE
SCOPE OF WORK
SOLICITATION NUMBER: PAX0117
AUSTIN ENERGY PROPERTY AND BOILER AND MACHINERY INSURANCE**

MEC 41- critical, 11- essentials

AE also has a Bently System 1 at Sand Hill Energy Center and a DM2000 at Decker Power Plant for continuous monitoring of some of the more expensive equipment and that data is fed to the DCS for operations to view at all times.

Boroscope inspections on the Sand Hill Energy Center LM6000's are conducted annually by either GE or TransCanada Turbines (authorized service vendor for GE equipment). Sand Hill Maintenance personnel who have attended GE borescope training perform at least one additional borescope on the LM6000's each year. Between vendor and plant personnel a borescope inspection is conducted on each LM6000 at least every six months.

Borescope inspections of the 7FA are performed every six months during the fall and spring outages by Gas Turbine Services.

Gas turbine maintenance is conducted using GE guidelines. For LM6000's it is 25,000 fired hours for combustion inspection (hot section) and 50,000 fired hours for major overhaul. Units 1-4 presently have approximately 20,000 fired hours. AE completed a hot section on Unit 3 in the fall of 2014, and plans to perform a hot section on one unit in each subsequent fiscal year. At the current run profile all of the hot section maintenance will be complete on Units 1-4 prior to 25,000 fired hours. Units 6&7 have approximately 6,000 hours and are years away from required maintenance. AE has had to pull and at least partially disassemble engines to repair specific problems and all other affected components are inspected at that time. For the 7FA (Unit 5), we completed the first Hot Gas Path Inspection at 25,000 hours in the fall of 2007, the first Major Inspection at 49,179 hours in the spring of 2011, and anticipate the second Hot Gas Path Inspection in either the fall of 2014 or spring of 2015. Austin Energy has a Long Term Service Agreement for 7FA maintenance with Power Systems Manufacturing. The term of the current LTSA started in August 2011 and covers the second Hot Gas Path Inspection, Major Inspection, borescope inspections, non-destructive testing, and corrective maintenance for the 7FA. The 7FA is also continuously monitored by Power Systems Maintenance as part of the Long Term Service Agreement.

"R" stamp repairs to date have been contracted for all repairs at Sand Hill. The Engineering group is working on an "R" stamp for Austin Energy.

3.0 FUTURE DEVELOPMENTS

The Contractor will be expected to provide coverage for future exposures that may occur because of construction, facilities acquisition or annexation. Currently there are not any plans to expand into different sources or energy facilities; however, additional substations will be added as needed.

4.0 SCOPE OF SERVICES

A. COVERAGE & LIMITS

The AE desires the broadest coverage available written on an "all risk" basis. AE expects limits of liability which are adequate to cover our exposures. The attachment list below is designed to provide an overview of our current coverage, premium, loss history, and facilities.

Attachment A:	Current Austin Energy Property/B&M Coverage / Limits (1 page)
Attachment B:	Current Austin Energy Placement and Deductibles (1 page)
Attachment C:	Austin Energy Premium History (1 page)
Attachment D:	Austin Energy Claims History (1 page)
Attachment E:	Austin Energy Property Values (3 pages)

**PURCHASING OFFICE
SCOPE OF WORK
SOLICITATION NUMBER: PAX0117
AUSTIN ENERGY PROPERTY AND BOILER AND MACHINERY INSURANCE**

Attachment F:	Austin Energy Transformer List (5 pages)
Attachment G:	Austin Energy Transformer Testing Information (1 page)
Attachment H :	Austin Energy Turbine List (1 page)
Attachment I:	Sand Hill Energy Center information (1 page)
Attachment J:	Jurisdictional Objects
Attachment K:	Current Lead Policy <i>all others follow form</i>
Attachment L:	Confidentiality Agreement

Additional Information about Austin Energy can be found at:
<http://www.austinenergy.com>

B. MINIMUM REQUIRED COVERAGE/SERVICE PROVISIONS

Austin Energy requires specific minimum coverage provisions and services as follows:

B1. Policy Delivery Provision

Successful proposer is required to provide two (2) complete copies of the policy to Austin Energy and (1) complete copy of the policy to the Risk Management Division within the Human Resources Department. ***The premium will not be paid until 30 days after receipt of an accurate and complete binder.***

B2. Broker Compensation on a Fixed Fee or Commission basis

All brokers/agents quoting on the property/boiler and machinery coverage for Austin Energy are required to indicate their compensation on the attached Quote Sheet. The successful proposer will be required to provide "proof" of their compensation via accounting records or carrier(s) verification.

B3. Property Inspections

Austin Energy expects comprehensive property inspections to be completed throughout the life of the contract at no additional cost to Austin Energy. The engineering team will be required to meet with Risk Management in order to establish formal communication procedures.

B4. Boiler and Machinery Inspections

Austin Energy requires jurisdictional inspections to be completed by state certified inspectors for all boilers on a timely basis. Austin Energy expects comprehensive boiler and machinery inspections to be supplied for all covered objects.

B5. Plan Review Services

The carrier shall provide construction plan review services for all Austin Energy construction at no additional cost to Austin Energy.

B6. Annual Loss Runs

Austin Energy shall be provided with loss runs on an annual basis, or more frequently as required. Loss runs should, at a minimum, specify the location, date of loss, full description of the loss, the current status of each claim, and the amounts paid and currently reserved.

B7. Claims Services

**PURCHASING OFFICE
SCOPE OF WORK
SOLICITATION NUMBER: PAX0117
AUSTIN ENERGY PROPERTY AND BOILER AND MACHINERY INSURANCE**

An outside independent adjusting firm is required. Austin Energy expects timely claims handling services and immediate response when catastrophic losses occur. Adjusters should be physically present at the loss site within 24 hours of any catastrophic event, if necessary.

5.0 PREFERRED COVERAGE PROVISIONS

Austin Energy prefers proposers to provide the following coverage provisions in their quotes:

5.1 Power Plant Valuations

The values for power plants and substations have been adjusted annually for changes in the "Handy-Whitman Index of Public Utility Construction Costs," published by Whitman, Requardt & Associates, LLP. Property additions and deletions are added annually to this revised valuation.

5.2 Loss Provision

The Carrier shall allow Austin Energy to replace damaged property with equipment or property that is deemed as more appropriate by the Austin Energy and to delete the requirement to replace buildings on the same site. ***The following paragraph indicates the desired specific wording:***

In the event that Austin Energy decides that it is in their best interest not to repair or replace the damaged property insured under this Policy with like kind and quality, but to replace with equipment/property that Austin Energy feels is more appropriate, underwriters will adjust the loss based on the repair/replacement cost of the damaged equipment or property insured under this policy. This settlement can be used to purchase other equipment/property, similar or not, with greater or lesser generating capacity within the confines of the Assured's Operations that they deem more appropriate than the damaged equipment/property.

5.3 Premium Adjustment

The Policy is issued in consideration of an initial premium. If the term of this Policy is longer than one year, for each subsequent year of coverage, premium will be due at the anniversary and will be subject to rates in effect at that time.

If any transaction effective between the anniversary dates of this Policy results in a net increase in premium of less than \$50,000 such premium change will not be invoiced until there is a total net increase of at least \$50,000. Any transaction changes to policy coverage and requirements shall be mutually agreed upon in writing between both parties via an amendment to the policy and/or Agreement in writing.

QUOTE SHEET

AUSTIN ENERGY PROPERTY/BOILER & MACHINERY COVERAGE QUOTATION

Proposers submitting a Property/B&M quote must complete each item below. Please write in the limit of liability in the box provided. Do not leave any item blank. If the item is not applicable, indicate this with "N/A". If space is needed to clarify items, please attach a separate sheet and label it. Circle "Yes" or "No" as appropriate.

Carrier quoting the Property/B&M coverage: _____

(If multiple carriers on risk attach a list of carrier names and participation percentages)

	DESCRIPTION OF COVERAGE	LIMIT OF LIABILITY	YES	NO
	Blanket All Risk Property Damage Coverage			
<u>THE FOLLOWING ARE ASSUMED TO BE SUBLIMITS THAT ARE A PART OF AND NOT IN ADDITION TO THE LIMIT OF LIABILITY INDICATED ABOVE</u>				
1.	Boiler & Machinery and Electrical Breakdown Is this a per occurrence limit?		<input type="checkbox"/>	<input type="checkbox"/>
2.	Transmission & Distribution within 1,000 ft. of Generating Premises and substations Is this a per occurrence limit?		<input type="checkbox"/>	<input type="checkbox"/>
3.	Extra Expense Coverage, excluding Replacement Power Does this include generating stations and substations?		<input type="checkbox"/>	<input type="checkbox"/>
4.	Flood Coverage, excluding property in High Hazard Flood Zone Is this a per occurrence limit? Does this include time element?		<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
5.	Flood Coverage for property in High Hazard Flood Zone Is this a per occurrence limit? Does this include time element?		<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
6.	Earth Movement Is this a per occurrence limit? Does this include time element?		<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
7.	Debris Removal Does this include flood and earth movement?		<input type="checkbox"/>	<input type="checkbox"/>
8.	Automatic Coverage for Newly Acquired Properties Is this a per occurrence limit? Does this include time element?		<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
9.	Errors and Omissions Does this include time element? Does this include flood and earth movement?		<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
10.	Temporary Protection and Preservation of Property		<input type="checkbox"/>	<input type="checkbox"/>
11.	Expediting Expense Is this a per occurrence limit?		<input type="checkbox"/>	<input type="checkbox"/>
12.	EDP Media Restoration Is this a per occurrence limit? Does this include time element?		<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>

QUOTE SHEET
AUSTIN ENERGY PROPERTY/BOILER & MACHINERY COVERAGE QUOTATION

	DESCRIPTION OF COVERAGE	LIMIT OF LIABILITY	YES	NO
13.	Property In-Transit Is this a per occurrence limit?		<input type="checkbox"/>	<input type="checkbox"/>
14.	Accounts Receivable Is this a per occurrence limit?		<input type="checkbox"/>	<input type="checkbox"/>
15.	Demolition and Increased Cost of Construction Is this a per occurrence limit?		<input type="checkbox"/>	<input type="checkbox"/>
16.	Contaminants and Pollutants Is the limit per occurrence and annual aggregate?		<input type="checkbox"/>	<input type="checkbox"/>
17.	Is the Premium Adjustment Clause as described in Scope of Work 0500, Section 9, #3 provided?		<input type="checkbox"/>	<input type="checkbox"/>
18.	Will plant and substation valuations be adjusted annually per the Handy Whitman Index, + or – equipment deletions?		<input type="checkbox"/>	<input type="checkbox"/>
19.	Coverage for any object that utilizes, transmits, or receives mechanical or electrical energy. Coverage includes: Pressure and Refrigeration Objects, Mechanical Objects, Electrical Objects and Turbine Generator Objects.		<input type="checkbox"/>	<input type="checkbox"/>
20.	Coverage for Hazardous Substance, Ammonia Contamination and Water Damage?		<input type="checkbox"/>	<input type="checkbox"/>
21.	Coverage for computer and EDP equipment used to operate a covered object provided?		<input type="checkbox"/>	<input type="checkbox"/>
22.	Deletion of In Use or Connected Ready for Use limitation provision?		<input type="checkbox"/>	<input type="checkbox"/>
23.	Does coverage include underground objects?		<input type="checkbox"/>	<input type="checkbox"/>
24.	Does coverage include new units subject to notification?		<input type="checkbox"/>	<input type="checkbox"/>
25.	Is hydrostatic, pneumatic, overspeed or insulation breakdown testing coverage by City of Austin personnel included?		<input type="checkbox"/>	<input type="checkbox"/>
26.	Is the Special Loss Provision as described in Scope of Work 0500, Section 9, #2 provided?		<input type="checkbox"/>	<input type="checkbox"/>
27.	How many days notice of cancellation be provided except for non-payment of premium?			
28.	At renewal will a firm rate or premium quotation be provided by August 1?		<input type="checkbox"/>	<input type="checkbox"/>
29.	How many annual hours of plan review are included in premium estimates?	Hours		
30.	How many annual hours of property inspection are included in the premium?	Hours		

Indicate other conditions, restrictions, or limitations the City should be aware of when evaluating your coverage quotation as an attachment to your Quote Sheet.

QUOTE SHEET
AUSTIN ENERGY PROPERTY/BOILER & MACHINERY COVERAGE QUOTATION

Deductible Provisions Being Quoted—Provide the Most Advantageous Deductible Limits Available

Deductible Application	Deductible Amt Per Occurrence
------------------------	-------------------------------

Provide a detailed listing of all physical damage deductibles being proposed. Deductible information shall include deductibles for substations, turbines, generators, boilers, transformer and locations in the high hazard flood zone.

Attach an explanation of the Application of Deductibles if 2 or more deductible amounts apply to a single occurrence.

TOTAL PREMIUM COST AT LIMITS AND DEDUCTIBLES INDICATED ABOVE: _____

BOILER JURISDICTIONAL INSPECTION FEE: (if included above, show “incl”) _____

ENGINEERING INSPECTION FEE CHARGES: (if included above, show “incl”) _____

SURPLUS LINES TAX, IF APPLICABLE: _____

STAMPING FEE, IF APPLICABLE: _____

TEXAS VOLUNTEER FIRE DEPARTMENT SURCHARGE: _____

BROKER FEE OR COMMISSION TOTAL:** _____

GRAND TOTAL _____

**** completion of this is required, or the proposal will be considered non-responsive**

TRIA

Limit: \$_____ Addt'l Premium: \$_____

NON-TRIA

Limit: \$_____ Addt'l Premium: \$_____

Please supply the policy wording and specific description of coverage for Terrorism

**CITY OF AUSTIN
PURCHASING OFFICE
SOLICITATION NUMBER
ATTACHMENT L**

CONFIDENTIALITY AGREEMENT

The City of Austin d/b/a Austin Energy® ("AE") is prepared to furnish ("Receiving Party"), a _____ corporation, with information for use in the development of a proposal to provide property insurance, and boiler and machinery insurance to AE (the "Proposal"), which information is confidential or otherwise generally not available to the public (the "Confidential Information"). The term "Confidential Information," with respect to Receiving Party, shall not include any such information (a) as is or may become generally available to the public through no fault or negligence of the Receiving Party, (b) that is known to Receiving Party at the time of disclosure, (c) that is thereafter acquired at any time from a source other than AE that was not known to Receiving Party to be prohibited from making disclosure, or (d) that is independently developed by Receiving Party.

As a condition to AE furnishing the Confidential Information to Receiving Party, and Receiving Party agreeing to receive the Confidential Information, AE and Receiving Party agree as follows:

1. Receiving Party will not disclose the Confidential Information furnished to it pursuant to this Confidentiality Agreement ("Agreement") without the prior written consent of AE other than to its officers, directors and employees, as well as those agents, representatives, counsel and affiliates and each of their respective officers, directors, employees, representatives, counsel or affiliates, if any, to whom Receiving Party reasonably needs to disclose such Confidential Information for the purposes of the Proposal (those parties who directly or indirectly are furnished with Confidential Information hereinafter are defined collectively as "Representatives"). Notwithstanding the first sentence hereof, Receiving Party will not disclose the Confidential Information furnished to it pursuant to this Agreement without the prior written consent of AE to Receiving Party's Representatives or Receiving Party's affiliates' employees who are directly engaged in the providing of property insurance and boiler and machinery insurance, including derivatives or other information thereon or related thereto. Receiving Party, after providing AE with advance written notice of what Confidential Information will be disclosed, may disclose the Confidential Information in order to comply with any applicable law, final order, regulation or ruling. Except as otherwise provided herein, Receiving Party will not use the Confidential Information other than for the Proposal. **Each Representative shall sign a copy of this Agreement to confirm that the Representative will abide by the terms of this Agreement and keep such information confidential.**
2. Receiving Party agrees to safeguard the Confidential Information to protect its confidentiality and inform each person having access to the Confidential Information of the terms of this Agreement. Immediately upon AE's request, Receiving Party will return to AE any Confidential Information that is written or otherwise recorded, except for that portion that may be found in analyses, compilations, studies or other documents prepared by or for Receiving Party, and no copies shall be retained by Receiving Party or the Representatives. That portion of the Confidential Information that is found in analyses, compilations, studies or other documents prepared by, or for, Receiving Party, any oral Confidential Information and any Confidential Information not so requested or returned shall be held by Receiving Party and kept subject to the terms of this Agreement, or destroyed.
3. AE makes no representation or warranty as to the accuracy or completeness of any information that is provided to Receiving Party, and AE shall have no liability to Receiving Party or its Representatives resulting from the use of such information by Receiving Party or its Representatives. For purposes of this Section 3, "information" is deemed to include all information furnished under this Agreement.
4. Neither this Agreement nor any communications of the parties shall be deemed to create any obligation or liability for either party hereto to proceed with any transaction unless and until the parties so agree in writing. This Agreement does not obligate either party to deal exclusively with the other party, and the parties agree that no fiduciary or special relationship shall be deemed to exist or arise with respect to this Agreement or the Proposal.
5. This Agreement shall be binding upon and for the benefit of AE and Receiving Party and their respective Representatives, successors, and permitted assigns.

**CITY OF AUSTIN
PURCHASING OFFICE
SOLICITATION NUMBER
ATTACHMENT L**

6. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO CONFLICTS OF LAW RULES OR PRINCIPLES. Venue shall be proper and shall lie exclusively in the state courts of Travis County, Texas.
7. This Agreement shall terminate on October 31, 2014.

Receiving Party

By: _____

Name: _____

Title: _____

AGREED AND ACCEPTED AS OF
THE DATE FIRST WRITTEN ABOVE:

City of Austin d/b/a Austin Energy

By: _____

Name: Leslie Milvo

Title: Risk Manager, City of Austin

Return to:

City of Austin, Texas
NON-SUSPENSION OR DEBARMENT CERTIFICATION
SOLICITATION NO. PAX0117

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

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

Contractor's Name: Wortham Insurance & Risk Management

Signature of Officer
or Authorized
Representative:



Date: 7/14/2014

Printed Name: George Z. Adkins

Title: Managing Director

CITY OF AUSTIN
NON-COLLUSION,
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING AFFIDAVIT

**SOLICITATION NO. PAX0117
FOR
PROPERTY AND BOILER AND MACHINERY INSURANCE FOR AUSTIN
ENERGY**

State of Texas

County of Travis

The undersigned "Affiant" is a duly authorized representative of the Offeror for the purpose of making this Affidavit, and, after being first duly sworn, has deposed and stated and hereby deposes and states, to the best of his or her personal knowledge and belief as follows:

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

1. **Anti-Collusion Statement.** The Offeror has not in any way directly or indirectly:
 - a. colluded, conspired, or agreed with any other person, firm, corporation, Offeror or potential Offeror to the amount of this Offer or the terms or conditions of this Offer.
 - b. paid or agreed to pay any other person, firm, corporation Offeror or potential Offeror any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached Offer or the Offer of any other Offeror.
2. **Preparation of Solicitation and Contract Documents.** The Offeror has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Solicitation or Contract documents. In addition, the Offeror has not otherwise participated in the preparation or development of the underlying Solicitation or Contract documents, except to the extent of any comments or questions and responses in the solicitation process, which are available to all Offerors, so as to have an unfair advantage over other Offerors, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.
3. **Participation in Decision Making Process.** The Offeror has not participated in the evaluation of Offers or other decision making process for this Solicitation, and, if Offeror is awarded a Contract hereunder, no individual, agent, representative, consultant, subcontractor, or subconsultant associated with Offeror, who may have been involved in the evaluation or other decision making process for this Solicitation, will have any direct or indirect financial interest in the Contract, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.
4. **Present Knowledge.** Offeror is not presently aware of any potential or actual conflicts of interest regarding this Solicitation, which either enabled Offeror to obtain an advantage over other Offerors or would prevent Offeror from advancing the best interests of the City in the course of the performance of the Contract.
5. **City Code.** As provided in Sections 2-7-61 through 2-7-65 of the City Code, no individual with a substantial interest in Offeror is a City official or employee or is related to any City official or employee within the first or second degree of consanguinity or affinity.
6. **Chapter 176 Conflict of Interest Disclosure.** In accordance with Chapter 176 of the Texas Local Government Code, the Offeror:
 - a. does not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income;
 - b. has not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$250 in

the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that OWNER is considering doing business with the Offeror.

- c. as required by Chapter 176 of the Texas Local Government Code, Offeror must file a Conflict of Interest Questionnaire with the Office of the City Clerk no later than 5:00 P.M. on the seventh (7th) business day after the commencement of contract discussions or negotiations with the City or the submission of an Offer, or other writing related to a potential Contract with the City. The questionnaire is available on line at the following website for the City Clerk:

<http://www.ci.austin.tx.us/cityclerk/coi.htm>

There are statutory penalties for failure to comply with Chapter 176.

If the Offeror cannot affirmatively swear and subscribe to the forgoing statements, the Offeror shall provide a detailed written explanation in the space provided below or, as necessary, on separate pages to be annexed hereto.

7. **Anti-Lobbying Ordinance.** As set forth in the Solicitation Instructions, Section 0200, paragraph 7N, between the date that the Solicitation was issued and the date of full execution of the Contract, Offeror has not made and will not make a representation to a member of the City Council, a member of a City Board, or any other official, employee or agent of the City, other than the Authorized Contact Person for the Solicitation, except as permitted by the Ordinance.

OFFEROR'S EXPLANATION:

Contractor's Name: Wortham Insurance & Risk Management

Printed
Name:

George Z. Adkins

Title

Managing Director



Signature of Officer or Authorized Representative: _____

Subscribed and sworn to before me this _____.

Notary Public

My Commission Expires _____

**CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION**

Contract Number: PAX0117	Description of Services: PROPERTY AND BOILER AND MACHINERY INSURANCE FOR AUSTIN ENERGY
Contractor Name: <u>Wortham Insurance & Risk Management</u>	

Pursuant to the Living Wages and Benefits provision of the contract (reference Section 0400, Supplemental Purchase Provisions), the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$10.90 per hour. In addition, employees are required to certify that they are compensated in accordance with the Living Wage provision. Contractors are prohibited from retaliating against any employee claiming non-compliance with the Living Wage provision.

I hereby certify under penalty of perjury that I am directly assigned to this contract and that I am:

- (1) compensated at wage rates equal to or greater than \$10.90 per hour; and
- (2) offered a health care plan with optional family coverage.

Employee's Title:	
Signature of Employee	Date:
Type or Print Name :	

(Witness Signature)

(Printed Name)

City of Austin, Texas
NONRESIDENT BIDDER PROVISIONS
SOLICITATION NO. PAX0117

Section 0835: Non-Resident Bidder Provisions

Company Name Wortham Insurance and Risk Management

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "non-resident Bidder"?

Answer: Texas Resident Bidder

- (1) Texas Resident Bidder- A Bidder whose principle place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.
(2) Nonresident Bidder- A Bidder who is not a Texas Resident Bidder.

- B. If the Bidder is a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state?

Answer: _____ Which State: _____

- C. If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a Contract on such bid in said state?

Answer: _____

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
NO GOALS UTILIZATION PLAN**

SOLICITATION NUMBER: PAX0117

PROJECT NAME: PROPERTY AND BOILER AND MACHINERY INSURANCE FOR AUSTIN ENERGY

The City of Austin has determined that no goals are appropriate for this project. **Even though no goals have been established for this solicitation, the Offeror is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

If any service is needed to perform the Contract and the Offeror does not perform the service with its own workforce or if supplies or materials are required and the Offeror does not have the supplies or materials in its inventory, the Offeror shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Offeror must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

Will subcontractors or sub-consultants or suppliers be used to perform portions of this Contract?

No NO If no, please sign the No Goals Form and submit it with your Offer in a sealed envelope.

Yes _____ If yes, please contact DSMBR to obtain further instructions and an availability list and perform Good Faith Efforts. Complete and submit the No Goals Form and the No Goals Utilization Plan with your Offer in a sealed envelope.

After Contract award, if your firm subcontracts any portion of the Contract, it is a requirement to complete Good Faith Efforts and the No Goals Utilization Plan, listing any subcontractor, subconsultant or supplier. Return the completed Plan to the Project Manager or the Contract Manager.

I understand that even though no goals have been established, I must comply with the City's MBE/WBE Procurement Program if subcontracting areas are identified. I agree that this No Goals Form and No Goals Utilization Plan shall become a part of my Contract with the City of Austin.

Wortham Insurance & Risk Management

Company Name

George Z. Adkins, Managing Director

Name and Title of Authorized Representative (Print or Type)



Signature

7/14/2014

Date

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
NO GOALS UTILIZATION PLAN**

SOLICITATION NUMBER: PAX0117

PROJECT NAME: PROPERTY AND BOILER AND MACHINERY INSURANCE FOR AUSTIN ENERGY

PRIME CONTRACTOR/CONSULTANT COMPANY INFORMATION

Name of Contractor/Consultant	Wortham Insurance & Risk Management		
Address	Wortham Tower 24 th Floor, 2727 Allen Parkway		
City, State Zip	Houston, Texas 77019		
Phone	713-346-1295	Fax Number	713-521-8295
Name of Contact Person	George Z. Adkins		
Is company City certified?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture <input type="checkbox"/>		

I certify that the information included in this No Goals Utilization Plan is true and complete to the best of my knowledge and belief. I further understand and agree that the information in this document shall become part of my Contract with the City of Austin.

Name and Title of Authorized Representative (Print or Type) George Z. Adkins, Managing Director



7/14/2014

Signature

Date

Provide a list of all proposed subcontractors/subconsultants/suppliers that will be used in the performance of this Contract. **Attach Good Faith Efforts documentation if non MBE/WBE firms will be used.**

Sub-Contractor/Consultant	Wortham - Austin		
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Ethnic/Gender Code:	<input checked="" type="checkbox"/> NON-CERTIFIED
Vendor ID Code	(Local Presence)		
Contact Person	Phone Number:		
Amount of Subcontract	\$20% of Commission Earned		
List commodity codes & description of services	Neil Haverlah (Former LCRA Risk Manager) offices in our Austin office and will be assigned as the Risk Management Resource to Austin Energy. We anticipate that Neil will spend 10-20% of his time assisting Austin Energy.		

Sub-Contractor/Consultant	N/A		
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Ethnic/Gender Code:	<input type="checkbox"/> NON-CERTIFIED
Vendor ID Code			
Contact Person	Phone Number:		
Amount of Subcontract	\$		
List commodity codes & description of services			

FOR DEPARTMENT OF SMALL AND MINORITY BUSINESS RESOURCES USE ONLY:

Having reviewed this plan, I acknowledge that the Offeror (HAS) or (HAS NOT) complied with the City Code, Chapters 2-9A, B, C, or D, as applicable

Reviewing Counselor _____ Date _____

Director/Deputy Director _____ Date _____

**CITY OF AUSTIN
PURCHASING OFFICE
SOLICITATION NUMBER
ATTACHMENT L**

CONFIDENTIALITY AGREEMENT

The City of Austin d/b/a Austin Energy® ("AE") is prepared to furnish _____ ("Receiving Party"), a _____ corporation, with information for use in the development of a proposal to provide property insurance, and boiler and machinery insurance to AE (the "Proposal"), which information is confidential or otherwise generally not available to the public (the "Confidential Information"). The term "Confidential Information," with respect to Receiving Party, shall not include any such information (a) as is or may become generally available to the public through no fault or negligence of the Receiving Party, (b) that is known to Receiving Party at the time of disclosure, (c) that is thereafter acquired at any time from a source other than AE that was not known to Receiving Party to be prohibited from making disclosure, or (d) that is independently developed by Receiving Party.

As a condition to AE furnishing the Confidential Information to Receiving Party, and Receiving Party agreeing to receive the Confidential Information, AE and Receiving Party agree as follows:

1. Receiving Party will not disclose the Confidential Information furnished to it pursuant to this Confidentiality Agreement ("Agreement") without the prior written consent of AE other than to its officers, directors and employees, as well as those agents, representatives, counsel and affiliates and each of their respective officers, directors, employees, representatives, counsel or affiliates, if any, to whom Receiving Party reasonably needs to disclose such Confidential Information for the purposes of the Proposal (those parties who directly or indirectly are furnished with Confidential Information hereinafter are defined collectively as "Representatives"). Notwithstanding the first sentence hereof, Receiving Party will not disclose the Confidential Information furnished to it pursuant to this Agreement without the prior written consent of AE to Receiving Party's Representatives or Receiving Party's affiliates' employees who are directly engaged in the providing of property insurance and boiler and machinery insurance, including derivatives or other information thereon or related thereto. Receiving Party, after providing AE with advance written notice of what Confidential Information will be disclosed, may disclose the Confidential Information in order to comply with any applicable law, final order, regulation or ruling. Except as otherwise provided herein, Receiving Party will not use the Confidential Information other than for the Proposal. **Each Representative shall sign a copy of this Agreement to confirm that the Representative will abide by the terms of this Agreement and keep such information confidential.**
2. Receiving Party agrees to safeguard the Confidential Information to protect its confidentiality and inform each person having access to the Confidential Information of the terms of this Agreement. Immediately upon AE's request, Receiving Party will return to AE any Confidential Information that is written or otherwise recorded, except for that portion that may be found in analyses, compilations, studies or other documents prepared by or for Receiving Party, and no copies shall be retained by Receiving Party or the Representatives. That portion of the Confidential Information that is found in analyses, compilations, studies or other documents prepared by, or for, Receiving Party, any oral Confidential Information and any Confidential Information not so requested or returned shall be held by Receiving Party and kept subject to the terms of this Agreement, or destroyed.
3. AE makes no representation or warranty as to the accuracy or completeness of any information that is provided to Receiving Party, and AE shall have no liability to Receiving Party or its Representatives resulting from the use of such information by Receiving Party or its Representatives. For purposes of this Section 3, "information" is deemed to include all information furnished under this Agreement.
4. Neither this Agreement nor any communications of the parties shall be deemed to create any obligation or liability for either party hereto to proceed with any transaction unless and until the parties so agree in writing. This Agreement does not obligate either party to deal exclusively with the other party, and the parties agree that no fiduciary or special relationship shall be deemed to exist or arise with respect to this Agreement or the Proposal.
5. This Agreement shall be binding upon and for the benefit of AE and Receiving Party and their respective Representatives, successors, and permitted assigns.

6. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO CONFLICTS OF LAW RULES OR PRINCIPLES. Venue shall be proper and shall lie exclusively in the state courts of Travis County, Texas.
7. This Agreement shall terminate on October 31, 2014.

Receiving Party



By: _____

Name: George Z. Adkins

Title: Managing Director

AGREED AND ACCEPTED AS OF
THE DATE FIRST WRITTEN ABOVE:

City of Austin d/b/a Austin Energy

By: _____

Name: Leslie Milvo

Title: Risk Manager, City of Austin

Return to:



TO: Veronica Lara, Director
Department of Small and Minority Business Resources

FROM: Sai Xoomsai Purcell, Senior Buyer

DATE: 05/19/2014

SUBJECT: Request for Determination of Goals for Solicitation No. PAX0117

Project Name: AE Property Insurance

Commodity

Code(s): 95343

Estimated Value: \$ 2,500,000

Below are scopes of work for this project as determined by the Purchasing Office and Department that are contained in this solicitation.

The City of Austin, hereinafter referred to as the City, is seeking proposals from brokers, agents and insurers who are experienced and qualified in providing insurance and ancillary services to large, complex electric utility property and boiler and machinery accounts with values in excess of one billion dollars. SOW attached.

The Departmental Point of Contact is: Leslie Milvo at Phone: 512-974-3245

Per paragraph 8.2.1 of the Rules Governing the Minority and Women Owned Business Enterprise Procurement Program, please approve the use of the above goals by completing and returning the below endorsement. If you have questions, please call me at 512-972-4016

☐ **Approved w/ Goals**

☒ **Approved, w/out Goals**

Recommend the use of the following goals based on the below reasons:

a. Goals: % MBE % WBE

b. Subgoals % African American % Hispanic

 % Native/Asian American % WBE

This determination is based on the following reasons: insufficient scores of work

Veronica Lara, Director

Date:

5-22-14

cc: Lorena Resendiz