



# City of Austin

## Purchasing Office

P.O. Box 1088, Austin, TX 78767

August 22, 2017

Texas Growth Fund Regional Center, LLC  
Rob Gritz  
1115 Holly Street  
Austin, TX 78702

Dear Mr. Gritz:

The Austin City Council approved the execution of a contract with your company, Texas Growth Fund Regional Center, LLC for EB-5 Regional Services in accordance with the referenced solicitation.

Responsible Department:	Economic Development Department
Department Contact Person:	Casey Smith
Department Contact Email Address:	<a href="mailto:Casey.Smith@austintexas.gov">Casey.Smith@austintexas.gov</a>
Department Contact Telephone:	(512) 974-6416
Project Name:	EB-5 Regional Center
Contractor Name:	Texas Growth Fund Regional Center, LLC
Contract Number:	MA 5500 NR170000016
Contract Period:	8/22/2017 – 8/21/2020
Dollar Amount	Revenue
Extension Options:	Two 12-month options
Requisition Number:	RQM 2200 16112900123
Solicitation Type & Number:	RFQS JRD0502
Agenda Item Number:	51
Council Approval Date:	6/15/2017

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.

Sincerely,

Jonathan Dalchau  
Procurement Specialist IV  
City of Austin  
Purchasing Office

**CONTRACT BETWEEN THE CITY OF AUSTIN ("CITY")  
AND  
TEXAS GROWTH FUND REGIONAL CENTER, LLC ("CONTRACTOR")  
FOR  
EB-5 REGIONAL CENTER  
MA 5500 NR170000016**

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 Texas Growth Fund Regional Center, LLC having offices at 1115 Holly Street, Austin, TX 78702 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 RFQS JRD0502 - EB-5 Regional Services.

**1.1 This Contract is composed of the following documents:**

- 1.1.1 This Document
- 1.1.2 The City's Solicitation, Request for Qualifications Statement (RFQS), RFQS JRD0502 - EB-5 Regional Services including all documents incorporated by reference
- 1.1.3 Texas Growth Fund Regional Center, LLC Offer, dated 1/9/2017, 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 Document
- 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 thirty-six (36) months and may be extended thereafter for up to two (2) twelve (12) month extension option(s), 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.

**1.4 Compensation.** This is a revenue contract. The Contractor shall submit payments to the City that represents one percent (1%) of the total EB-5 deployed capital raised through this contract. Payments shall be made to the City until the partnership between the Contractor and City cease to exist.

**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.

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

1.6.1 Revenue reimbursement shall be calculated using a simple daily interest calculation formula:

$$\frac{1\% \text{ Rate}}{360 \text{ Days}} \times \text{Deployed Capital} \times \text{Days in Pay Period}$$

1.6.2 Within three (3) months after contract execution and before services are rendered related to EB-5 Regional Center, the Contractor and City will develop, mutually agree to, and incorporate the following by amendment to this contract:

1.6.2.1 A detailed scope of services related to the EB5 Regional Center

1.6.2.2 A guideline to decipher Contractor and City roles, responsibilities, and involvement to target and market EB-5 investment for City affiliated projects

1.6.2.3 A communication process and schedule

1.6.2.4 A payment schedule/plan that details at what intervals payments will be rendered

1.6.3 EB-5 projects sourced and proposed to the City by the Contractor will be submitted to the City for the decision to opt-in for City support. The City will decide on a project-by-project basis whether to participate in the project and include the City seal and support.

1.6.4 EB-5 projects sourced and proposed to the City by third parties will be submitted to the Contractor for the decision to opt-in for Regional Center sponsorship and EB-5 financing execution. The Contractor will decide on a project-by-project basis whether to participate in the project and provide the Regional Center sponsorship and EB-5 financing execution.

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.

TEXAS GROWTH FUND REGIONAL CENTER, LLC

CITY OF AUSTIN

Robert Gritz

Printed Name of Authorized Person



Signature

President and CEO

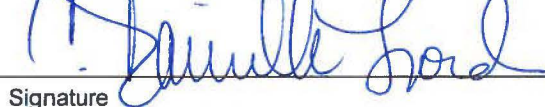
Title:

July 10, 2017

Date:

DANIELLE LORD

Printed Name of Authorized Person



Signature

PROCUREMENT MANAGER

Title:

8/22/2017

Date:





CITY OF AUSTIN, TEXAS

# Request for Qualification Statement





Tab 1	Executive Summary .....	3
Tab 2	City of Austin Purchasing Documents.....	7
Tab 3	Authorized Negotiator.....	15
Tab 4	Organizational Capacity.....	17
Tab 5	Qualifications .....	35
Tab 6	Expertise & Strategies .....	71
Tab 7	Exceptions .....	78
Tab 8	Acceptance Period.....	85



# 1. Executive Summary





## INTRODUCTION

Texas Growth Fund Regional Center is pleased to have the opportunity to respond to the City's RFQ for partnership in EB-5 financing.

We have been in the "Austin, Texas investment" business since late 2014, and we have invested our own \$2.0 million of risk capital into our Austin-based Company over the past 3.5 years.

Our own investment has been put to:

- (a) developing our EB-5 execution capacity at the highest levels of professionalism as an institutional lender in the U.S. and as an issuer of securities to accredited individual investors across a multitude of productive countries, and
- (b) positioning the City of Austin as a current destination market for investment that is second to no other City in the United States.

As such, our commitment to nationwide EB-5 market leadership is inseparable from our mission to command Austin's share of the current bulge of foreign capital investment in United States assets. In terms of traction, Texas Growth Fund's currently active EB-5 projects will fund over 3,000 jobs in Austin.

## OUR FACE TO THE WORLD

We intentionally built the most compelling and "simple-to-grasp" portfolio offering of at least \$100 million in EB-5 placements—leveraging nearly \$500 million in total job-creating construction—by featuring the most competitive EB-5 investment opportunities that exist in and for our City.

Our current EB-5 portfolio combines:

- the tallest residential condominium project in Texas, and in the entire Western U.S.
- aptly named "The Independent", the iconic Austin tower we have taken to the international

capital markets trumps not only Dallas and Houston, but also Los Angeles and San Francisco, in its scale; and

- what will be the 24th successful student housing project developed by our Client-borrower, for the "top rated public university in Texas, and in the entire U.S."
- in the West Campus area of The University of Texas at Austin.

No other regional center has taken the initiative, risk or care to produce the quality and scale of investment "product" that positions Austin to win investor market share from traditionally-favored cities in New York, California and Florida.

According to the Chief Economist of the U.S. Dept. of Commerce, in the latest EB-5 outcomes report to Homeland Security and to the USCIS' Investor Program Office—issued this past week (January 10, 2017):

- Nearly three-quarters (73%) of all EB-5 investors invested in Regional Center projects in California, New York, Florida, Ohio and Pennsylvania; and
- Over 80 percent (80%) of total investment went to projects in California, New York, Florida, Maryland and Nevada.

The State of Texas—let alone the City of Austin—is notably absent from the actual results tables of nationwide EB-5 investment, as summarized above. This begins to frame the requisite context for truly understanding the focused preparation and persistence that Texas Growth Fund has brought to its origination of programmatic EB-5 financing in and for Austin—with respect for what it takes to succeed in real world terms and on local, statewide, nationwide and global planes of action, simultaneously.

## OUR INTERFACE WITH WASHINGTON, D.C.

While Texas Growth Fund projects are focused in Austin, we are simultaneously active with Representatives in Congress and in the Federal government agencies in Washington, D.C. that are involved in directing the legislation and regulation that impacts the status and evolution of the EB-5 Program.

Among other means, Texas Growth Fund acts to generate ongoing support for the program by:

- demonstrating the program's effectiveness outside of the traditional gateway cities like Manhattan
- demonstrating unimpeachable integrity and absolute best practices in both raising and investing EB-5 capital
- actively raising the bar for this financing channel overall, by participation in the EB-5 industry's organizing trade association (IIUSA) and its working groups that are dedicated to these goals.

As one recent reference, the Chairman of the Congressional Committee for Homeland Security, Congressman Michael McCaul, cited one and only one EB-5 project—Texas Growth Fund Project I: Aspen Heights Downtown—in his keynote address to the EB-5 Industry at the Bi-annual IIUSA Conference in Los Angeles on October 11, 2016, as an example of the success of the EB-5 Program in his District (which includes both Houston and Austin).

Just this past week, we were invited by IIUSA Board Member Charles Foster—whose firm in Houston also serves as our Immigration Counsel—to join a group of fewer than 10 industry-leaders in the U.S. in a private session with Senator Jeff Flake of Arizona to collaborate on how to succeed in bi-partisan negotiation of the most balanced and beneficial possible EB-5 Program reforms and reauthorization. We have separately established a direct relationship and dialog with Congressman Jared Polis of

Colorado, who is another strong advocate for the EB-5 program in the U.S. House of Representatives. There are other initiatives of Texas Growth Fund in process collaboratively with industry leaders that are designed to make material positive contributions to increasing unity in support of the industry on Capitol Hill.

## THE EXPERIENCE OF PARTNERSHIP WITH TEXAS GROWTH FUND

Texas Growth Fund principals have been recognized for prior successes in both private and public sector enterprise, including effective leadership of public-private partnerships. Our experience in highly-regulated industries, especially finance, and our commitment to best practices will be highlighted along with that of the best-in-class professional team we have selected and integrated into one highly-efficient execution platform. References that range from our important, Austin-based Client-partner to IIUSA's own Management Associate as well as a Board Member—and from our nationally-reknowned EB-5 Economist to each of our national EB-5 industry-leading professional advisors in each of their respective practice areas of corporate, SEC, immigration and lending law—impart consistently high regard for the experience of partnership with Texas Growth Fund professionals in the trenches of actual EB-5 financing execution.

As requested, we have described our EB-5 financing status and process in detail so that the City may appreciate the care we have taken to create a solid foundation for a highly-scalable Austin-based company that operates in total compliance with USCIS, SEC and other agency regulations; simply put, in a way that conveys the central challenge of EB-5 financing: we generate the real world results that each of the most sophisticated developers and the least sophisticated investors are able to trust in their respective financial partnership with us.



## FOREIGN EFFECTIVENESS AND DOMESTIC COMPLIANCE IN THE PRODUCTION AND SALE OF INVESTMENT SECURITIES

Regarding foreign effectiveness: Instead of paying for expensive trade show booths or pitching foreign sourcing agents in the dark, we took the time and care to study the marketplace and identify the project and partner selection criteria and habits of the most productive agents. Once we understood these market realities, we sought to design our “product” for its optimal “market fit”, to be as frictionless and actionable for our overseas partners as possible. Our approach has been to produce keys that work—that actually open doors—in service to the ideal overseas allies and investors (and the best-available domestic investees).

Regarding domestic compliance: the “product” we’ve developed not only meets the real world requirements of the most worthwhile EB-5 agents (i.e. supplies them with the optimal “commercial inventory” that they need to efficiently run their businesses (i.e. make sales)), but it is also meticulously-compliant with U.S. regulatory agencies’ requirements. We deeply respect the fact that we are producers of investment Securities for individual investors (not institutional investors), as distinct from being, for example, the “authors of marketing materials”. Given the inherent cultural and language-based hurdles of foreign investors (who can be more focused on residency objectives than financial ones), we build our investment products upon the belief that our foreign investors deserve the absolute highest standards of protection; our policies and procedures are in many ways more rigorous and protective than the minimum standards required for U.S. resident investors who are already within the jurisdiction of the U.S. Federal Agencies.

Texas Growth Fund is already known, both domestically and internationally in the EB-5 industry, for its self-imposed integrity measures and for its investment and financing industry professionalism in service to investors and developers.

## PARTNERSHIP IN AUSTIN’S GLOBAL CONNECTEDNESS, INTENTIONAL GROWTH AND CULTURE-KEEPING

Last but not least: in this Response, we hope to share our team’s long-standing commitment to the City of Austin, as faithful Texas-Exes and founders of several iconic, “Austin culture-keeping” real estate, lifestyle and technology ventures, as well as several arts and education-based local nonprofit sponsorship activities.

Since we are 100% aligned with the uniquely progressive culture and balanced preservation and growth objectives of our chosen town of Austin, we believe that we are best-suited to co-lead this partnership with the City of Austin, as one of its primary representatives to the overseas investment community.

We care to be good and sensitive stewards of the many factors that already have made Austin the fastest growing city in the country. We are already contributing to Austin becoming more of an international hub, with increasing global connectedness to every continent. We care about how the inevitable continuing growth of our City may affect the quality of life of all of its residents, and we understand how much this depends upon the work that can be done in a supportive partnership with our City Government. It is in this broad context that Texas Growth Fund Regional Center views the opportunity of this prospective EB-5 partnership with the city.

It would be an honor to work more closely with the City’s Executives in evaluating the feasibility of the dynamic range of initiatives and objectives that are initially targeted herein. How cool would it be if our City’s unique culture of collaborative innovation is directed to authentically manifest in the global financing mandate, skills and resources of this partnership in such a way that both prioritizes and pioneers efficient solutions to our City’s greatest infrastructure needs and interests.







## City of Austin Purchasing Documents

- Offer and Awards
- Section 0700—Reference Sheets
- Completed and Signed Section 0900 No Goals Utilization Plan
- Addendums

The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.

Company Name: Texas Growth Fund Regional Center, LLC  
Company Address: 1115 Holly Street  
City, State, Zip: Austin, Texas, 78702  
Federal Tax ID: \_\_\_\_\_  
Printed Name of Officer or Authorized Representative: Rob Gritz  
Title: President & CEO  
Signature of Officer or Authorized Representative:   
Date: January 9th, 2017  
Email Address: rgritz@growthfundtexas.com  
Phone Number: 805-340-1545

\* Qualifications Statement must be submitted with this Offer sheet to be considered for award



**Section 0700: Reference Sheet**

Responding Company Name Texas Growth Fund Regional Center, LLC

The City at its discretion may check references in order to determine the Offeror's experience and ability to provide the products and/or services described in this Solicitation. The Offeror shall furnish at least 3 complete and verifiable references. References shall consist of customers to whom the offeror has provided the same or similar services within the last 5 years. References shall indicate a record of positive past performance.

1. Company's Name Aspen Heights Partners  
Name and Title of Contact Joel Heikenfeld, Vice President of Investments  
Project Name The Independent  
Present Address 1301 S Capital of Texas Hwy #201  
City, State, Zip Code Austin, TX, 78746  
Telephone Number 512-9103341 Fax Number ( )  
Email Address jheikenfeld@myaspenheights.com
2. Company's Name Aspen Heights Partners  
Name and Title of Contact Colin Kilgore, Director of Capital Markets  
Project Name Koenig and Lamar  
Present Address 1301 S Capital of Texas Hwy #201  
City, State, Zip Code Austin, TX, 78746  
Telephone Number 512-9103421 Fax Number ( )  
Email Address ckilgore@myaspenheights.com
3. Company's Name Aspen Heights Partners  
Name and Title of Contact Daniel Fuchs, Chief Financial Officer  
Project Name AH Downtown  
Present Address 1301 S Capital of Texas Hwy #201  
City, State, Zip Code Austin, TX, 78746  
Telephone Number 512-9103309 Fax Number ( )  
Email Address dfuchs@myaspenheights.com

**City of Austin, Texas**  
**NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION**

**City of Austin, Texas**

**Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy**

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

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

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

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

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

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

#### **Sanctions:**

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

#### **Term:**

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

Dated this 22nd day of August, 2017

CONTRACTOR  
Authorized  
Signature

Texas Growth Fund Regional Center, LLC



Title

President and CEO



**Section 0900: Minority- and Women-Owned Business Enterprise (MBE/WBE) Procurement Program No Goals Form**

SOLICITATION NUMBER: JRD0502  
PROJECT NAME: EB-5 REGIONAL CENTER

The City of Austin has determined that no goals are appropriate for this project. Even though goals were not assigned for this solicitation, the Bidder/Proposer is required to comply with the City's MBE/WBE Procurement Program, if areas of subcontracting are identified.

If any service is needed to perform the Contract and the Bidder/Proposer does not perform the service with its own workforce or if supplies or materials are required and the Bidder/Proposer does not have the supplies or materials in its inventory, the Bidder/Proposer shall contact the Small and Minority Business Resources Department (SMBR) 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 Bidder/Proposer 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 ☒ If no, please sign the No Goals Form and submit it with your Bid/Proposal in a sealed envelope

Yes ☐ If yes, please contact SMBR 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 Bid/Proposal 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, sub-consultant, or supplier. Return the completed Plan to the Project Manager or the Contract Manager.

I understand that even though goals were not assigned, 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.

**Texas Growth Fund Regional Center, LLC**

Company Name

**Rob Gritz**

Name and Title of Authorized Representative (Print or Type)



Signature

Date





**ADDENDUM  
REQUEST FOR QUALIFICATION STATEMENTS  
EB-5 REGIONAL CENTER  
CITY OF AUSTIN, TEXAS**

**RFQS: JRD0502**

**Addendum No: 1**

**Date of Addendum: December 15, 2016**

This addendum is to incorporate the following changes to the above-referenced solicitation.

**1.0 Questions and Answers.**

(Q1) Is the City requesting insurance certificates pre-award or post-award?

(A1) Insurance documents will be required after City Council approves the selected firm and prior to contract execution.

(Q2) Describe the nature of the relationship between the City and the awarded Contractor? Will all Contractor business within the City limits fall under the contract terms (e.g. revenue to the City and City seal and support)?

(A2) The City requests that the Contractor submit all projects to the City for the decision to opt-in for City support. The City will decide on a project-by-project basis whether to participate in the project and include the City seal and support. The City is likely to authorize and participate in projects which fall under the lines of business outlined in the Scope of Work.

(Q3) What territory is covered with this scope of work?

(A3) Anything in Austin City Limits according to United States Citizenship and Immigration Services standards.

(Q4) Will the project list expand?

(A4) The project list is more of a guideline highlighting specific areas of interest for the City. The list is likely to expand over time.

(Q5) With respect to the City's Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Ordinance, will that affect our ability to discuss current projects with City personnel?

(A5) No. Other projects are not affected by the City's Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying ordinance. Only questions, comments, or discussions dealing directly with this solicitation is affected by the anti-lobbying ordinance. If any discussions with City personnel leads to talking about this solicitation, you should stop the conversation and direct the conversation to the authorized contacts for this solicitation.

(Q6) Is the City looking to partner with an existing Regional Center, or do you anticipate setting up an entirely new Regional Center?

(A6) The City would like to partner with an existing Regional Center at this time.

(Q7) I am not sure if I need to subcontract right now, can I decide to subcontract after the contract award?

(A7) Yes, if you decide you want to subcontract after the contract is award, you can contact the Small and Minority Business Resources department (SMBR) at (512) 974-7600 and follow the Good Faith Efforts at that time.





- (Q8) Is the Interested Parties Disclosure form 1295 required with the bid submittal or after contract award?  
(A8) The 1295 Form should not need to be submitted with your bid package, it will be requested at the time of contract award.

2.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURES affixed below, this Addendum is hereby incorporated into and made a part of the above-referenced Invitation for Bid.

APPROVED BY:

A handwritten signature in blue ink, appearing to be "Jonathan Dalchau".

Jonathan Dalchau, Senior Buyer Specialist  
Purchasing Office

12/15/2016  
Date

ACKNOWLEDGED BY:

Texas Growth Fund Regional Center, LLC  
Vendor Name

A handwritten signature in blue ink, appearing to be "TS".  
Authorized Signature

1/9/17  
Date

**RETURN A COPY OF THIS ADDENDUM**  
to the Purchasing Office, City of Austin, Texas with your bid.  
Failure to do so may constitute grounds for rejection of your bid.



**CITY OF AUSTIN, TEXAS**  
Purchasing Office  
**REQUEST FOR QUALIFICATION STATEMENTS (RFQS)**  
**OFFER SHEET**

**SOLICITATION NO:** RFQS 5500 JRD0502

**COMMODITY/SERVICE DESCRIPTION:** EB-5 Regional Center

**DATE ISSUED:** December 5, 2016

**REQUISITION NO.:** 16112900123

**PRE-RESPONSE CONFERENCE TIME AND DATE:** 9:00 AM  
(CST), Wednesday, December 14, 2016

**COMMODITY CODE:** 91837

**LOCATION:** Municipal Building, 124 W. 8th Street, Suite 335.1,  
Austin, TX 78701  
*Pre-response Remote Conference Phone Number: 512-974-9300*  
*Enter the following code when prompted: 422948*

**FOR CONTRACTUAL AND TECHNICAL  
ISSUES CONTACT THE FOLLOWING  
AUTHORIZED CONTACT PERSON:**

Primary Contact:

Jonathan Dalchau  
Senior Buyer Specialist  
**Phone: (512) 974-2938**  
**E-Mail:** jonathan.dalchau@austintexas.gov  
**Phone: (512) Prefix-Ext**

**RESPONSES DUE PRIOR TO:** 2:00 PM (CST), Tuesday, January  
10, 2017

**RESPONSE CLOSING TIME AND DATE:** 2:15 PM (CST),  
Tuesday, January 10, 2017

**LOCATION:** MUNICIPAL BUILDING, 124 W 8<sup>th</sup> STREET  
RM 308, AUSTIN, TEXAS 78701

Second Chair:

Marian Moore

Buyer II

**Phone: (512) 974-2062**  
**E-Mail:** Marian.Moore@austintexas.gov

**LIVE SOLICITATION CLOSING ONLINE:** For RFQS's, only the  
names of respondents will be read aloud

For information on how to attend the Solicitation Closing online,  
please select this link:

<http://www.austintexas.gov/departments/bid-opening-webinars>

**When submitting a sealed Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below:**

Address for US Mail (Only)	Address for Fedex, UPS, Hand Delivery or Courier Service
City of Austin	City of Austin, Municipal Building
Purchasing Office-Response Enclosed for Solicitation # JRD0502	Purchasing Office-Response Enclosed for Solicitation # JRD0502
P.O. Box 1088	124 W 8 <sup>th</sup> Street, Rm 310
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

**NOTE: Offers must be received and time stamped in the Purchasing Office prior to the Due Date and Time. It is the responsibility of the Offeror to ensure that their Offer arrives at the receptionist's desk in the Purchasing Office prior to the time and date indicated. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Offer arriving on time. See Section 0200 for additional solicitation instructions.**

**All Offers (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.**

**SUBMIT 1 ORIGINAL AND 1 ELECTRONIC COPY OF YOUR RESPONSE**  
(Electronic copy should be a single scanned file of the original response per flash drive)

**\*\*\*SIGNATURE FOR SUBMITTAL REQUIRED ON PAGE 3 OF THIS DOCUMENT\*\*\***



**This solicitation is comprised of the following required sections. Please ensure to carefully read each section including those incorporated by reference. By signing this document, you are agreeing to all the items contained herein and will be bound to all terms.**

SECTION NO.	TITLE	PAGES
0100	STANDARD PURCHASE DEFINITIONS	*
0200	STANDARD SOLICITATION INSTRUCTIONS	*
0300	STANDARD PURCHASE TERMS AND CONDITIONS	*
0400	SUPPLEMENTAL PURCHASE PROVISIONS	3
0500	SCOPE OF WORK	5
0600	RESPONSE PREPARATION INSTRUCTIONS & EVALUATION FACTORS	5
0700	REFERENCE SHEET – Complete and return if required	1
0800	NON-DISCRIMINATION CERTIFICATION	*
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	*
0810	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION	*
0900	MBE/WBE PROCUREMENT PROGRAM PACKAGE NO GOALS FORM – Complete & return	2
Attachment A	EXCEPTIONS FORM	1
Attachment B	QUARTERLY REPORTING TEMPLATE	1
Attachment C	FIGURES AND TABLES DEPICTING AUSTIN'S ECONOMY	6

**\* Documents are hereby incorporated into this Solicitation by reference, with the same force and effect as if they were incorporated in full text. The full text versions of the \* Sections are available on the Internet at the following online address:**

[http://www.austintexas.gov/financeonline/vendor\\_connection/index.cfm#STANDARDBIDDOCUMENTS](http://www.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS)

**If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office located in the Municipal Building, 124 West 8<sup>th</sup> Street, Room #308 Austin, Texas 78701; phone (512) 974-2500. Please have the Solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed, or faxed to you.**

#### **INTERESTED PARTIES DISCLOSURE**

**In addition, Section 2252.908 of the Texas Government Code requires the successful offeror to complete a Form 1295 “Certificate of Interested Parties” that is signed and notarized for a contract award requiring council authorization. The “Certificate of Interested Parties” form must be completed on the Texas Ethics Commission website, printed, signed and submitted to the City by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury prior to final contract execution.**

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

**The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.**

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Federal Tax ID No. \_\_\_\_\_

Printed Name of Officer or Authorized Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Signature of Officer or Authorized Representative: \_\_\_\_\_

Date: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**\* Qualifications Statement must be submitted with this Offer sheet to be considered for award**





**ADDENDUM  
REQUEST FOR QUALIFICATION STATEMENTS  
EB-5 REGIONAL CENTER  
CITY OF AUSTIN, TEXAS**

**RFQS: JRD0502**

**Addendum No: 1**

**Date of Addendum: December 15, 2016**

This addendum is to incorporate the following changes to the above-referenced solicitation.

**1.0 Questions and Answers.**

(Q1) Is the City requesting insurance certificates pre-award or post-award?

(A1) Insurance documents will be required after City Council approves the selected firm and prior to contract execution.

(Q2) Describe the nature of the relationship between the City and the awarded Contractor? Will all Contractor business within the City limits fall under the contract terms (e.g. revenue to the City and City seal and support)?

(A2) The City requests that the Contractor submit all projects to the City for the decision to opt-in for City support. The City will decide on a project-by-project basis whether to participate in the project and include the City seal and support. The City is likely to authorize and participate in projects which fall under the lines of business outlined in the Scope of Work.

(Q3) What territory is covered with this scope of work?

(A3) Anything in Austin City Limits according to United States Citizenship and Immigration Services standards.

(Q4) Will the project list expand?

(A4) The project list is more of a guideline highlighting specific areas of interest for the City. The list is likely to expand over time.

(Q5) With respect to the City's Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Ordinance, will that affect our ability to discuss current projects with City personnel?

(A5) No. Other projects are not affected by the City's Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying ordinance. Only questions, comments, or discussions dealing directly with this solicitation is affected by the anti-lobbying ordinance. If any discussions with City personnel leads to talking about this solicitation, you should stop the conversation and direct the conversation to the authorized contacts for this solicitation.

(Q6) Is the City looking to partner with an existing Regional Center, or do you anticipate setting up an entirely new Regional Center?

(A6) The City would like to partner with an existing Regional Center at this time.

(Q7) I am not sure if I need to subcontract right now, can I decide to subcontract after the contract award?

(A7) Yes, if you decide you want to subcontract after the contract is award, you can contact the Small and Minority Business Resources department (SMBR) at (512) 974-7600 and follow the Good Faith Efforts at that time.



(Q8) Is the Interested Parties Disclosure form 1295 required with the bid submittal or after contract award?

(A8) The 1295 Form should not need to be submitted with your bid package, it will be requested at the time of contract award.

2.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURES affixed below, this Addendum is hereby incorporated into and made a part of the above-referenced Invitation for Bid.

APPROVED BY:

A blue ink signature of Jonathan Dalchau.

Jonathan Dalchau, Senior Buyer Specialist  
Purchasing Office

12/15/2016

Date

ACKNOWLEDGED BY:

\_\_\_\_\_  
Vendor Name

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

**RETURN A COPY OF THIS ADDENDUM**  
**to the Purchasing Office, City of Austin, Texas *with your bid.***  
**Failure to do so may constitute grounds for rejection of your bid.**

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

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

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



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

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

**10. WORKFORCE**

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

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

**12. INVOICES:**

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

**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. AUDITS and RECORDS:**

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance 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. Records Retention:
  - i. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the contract.
  - ii. All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when:
    - a. requested by a director or an authorized City employee; or
    - b. the contract is completed or terminated.
  - iii. The Contractor shall retain all 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.
- C. The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.



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

**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.
- 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.

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

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.
  - 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.

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

- 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 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.



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

29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.
30. **DELAYS:**
- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
  - B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In 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.

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

- 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.
- 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**

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

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 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
34. **NOTICES**: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.
37. **CONFIDENTIALITY**: In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.



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

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 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

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

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 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

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

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.

54. **EQUAL OPPORTUNITY**

- A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
- B. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

55. **INTERESTED PARTIES DISCLOSURE**

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

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

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

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

**A. Definitions. As used in this paragraph –**

- i. "Component" means an article, material, or supply incorporated directly into an end product.
- ii. "Cost of components" means -
  - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
  - (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  
SOLICITATION NUMBER: RFQS JRD0502**

The following Supplemental Purchasing Provisions apply to this solicitation:

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

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by two (2) weeks prior to the bid opening date. Submissions may be made via email to [jonathan.dalchau@austintexas.gov](mailto:jonathan.dalchau@austintexas.gov), or via fax at (512) 974-2388.

2. **INSURANCE:** Insurance is required for this solicitation.

A. **General Requirements:** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award.
- ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

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

B. **Specific Coverage Requirements:** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
  - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
    - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
    - (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage
- ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
  - (1) The policy shall contain the following provisions:

**CITY OF AUSTIN  
PURCHASING OFFICE  
SUPPLEMENTAL PURCHASE PROVISIONS  
SOLICITATION NUMBER: RFQS JRD0502**

- (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
  - (b) Contractor/Subcontracted Work.
  - (c) Products/Completed Operations Liability for the duration of the warranty period.
  - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.
- (2) The policy shall also include these endorsements in favor of the City of Austin:
  - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
  - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
  - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
- iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
  - (1) The policy shall include these endorsements in favor of the City of Austin:
    - (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
    - (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
    - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
- iv. **Professional Liability Insurance:** The Contractor shall provide coverage, at a minimum limit of \$500,000 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.
- C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

**3. TERM OF CONTRACT:**

- A. The Contract shall be in effect for an initial term of thirty-six (36) months and may be extended thereafter for up to two (2) additional 12-month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.
- 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.

**CITY OF AUSTIN  
PURCHASING OFFICE  
SUPPLEMENTAL PURCHASE PROVISIONS  
SOLICITATION NUMBER: RFQS JRD0502**

**4. 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 certify that the Offeror has not 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>

**5. 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.

**6. 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:

Casey Smith

---

Email: [Casey.Smith@austintexas.gov](mailto:Casey.Smith@austintexas.gov)

---

Phone: (512) 974-6416

---

\*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.

**CITY OF AUSTIN  
SCOPE OF WORK  
EB-5 REGIONAL CENTER  
SOLICITATION NO. RFQS JRD0502**

**1. PURPOSE**

The City of Austin (City), seeks responses to this Request for Qualifications (RFQS) to establish a contract with an EB-5 Regional Center (Regional Center) approved to operate within the Austin corporate city limits. The Regional Center shall collaborate with the City for marketing City-affiliated projects for EB-5 funding. The City's collaboration will be in the form of sponsorship or endorsement of a portfolio of City-affiliated projects for which the City seeks to attract investment.

The City seeks to become actively engaged in facilitating the accessibility and deployment of foreign investment resources through the Department of Homeland Security, United States Citizenship and Immigration Services (USCIS) EB-5 Immigrant Investor Program (EB-5 Program). The City will achieve this by collaborating with a Regional Center that meets the City's expectations for experience and investment strategy

**2. BACKGROUND**

**2.1. About the City of Austin**

Austin, Texas, population 931,800 is the 11th largest city in the country. This vibrant and dynamic city tops numerous "Best" lists for business, entertainment, cost of living and quality of life. Austin was selected as the "Best City for the Next Decade" (Kiplinger), the "Top Creative Center" in the US (Entrepreneur.com), and is in the Top Seven List of Intelligent Communities for 2012 as ranked by the Intelligent Community Forum. Austin continues to lead the country with its vision of being the "Most Livable City in the Country", emerging as a player on the international scene with such events as SXSW, Formula 1 and being home to companies such as Apple, Samsung, Dell, The Seton Healthcare Family and St. David's HealthCare systems. Home to the University of Texas, state government, and the "Live Music Capital of the World", and its growth as a film center, Austin has gained worldwide attention as a hub for education, business, health, and sustainability. Since 1900, Austin's population has doubled every 20 years with continued projected record-breaking growth into the next decade and beyond.

**2.2. Project Background**

The EB-5 Program is a federal program that engages private investors, developers, local governmental agencies, the Securities and Exchange Commission (SEC) and USCIS. As such, there are a number of substantive and technical compliance issues, and the Contractor should have experience with foreign investment capital, SEC and USCIS procedures and policies, including approved I-526 <http://www.uscis.gov/i-526> and I-829 petitions <http://www.uscis.gov/i-829>.

The City anticipates the working relationship with the selected Regional Center to select City-affiliated projects for the EB-5 program using the following steps:

- 2.2.1. Over the course of monthly meetings, a project is proposed for the partnership by City staff, the Regional Center, or an outside party such as a developer or the University of Texas. The proposed project must meet City-affiliated project Criteria listed under sections 2.3.1, 2.3.2, or 2.3.3 and not have any of the characteristics as described under sections 2.3.5.1, 2.3.5.2, or 2.3.5.3.
- 2.2.2. The Regional Center reviews the proposed City-affiliated project and determines whether it is suitable for the EB-5 program.
- 2.2.3. The Economic Development Director issues a memo establishing that the proposed project is suitable for designation as a City-affiliated project and thus may be marketed by the Regional Center as an EB-5 Project.
- 2.2.4. The Regional Center markets the project to investors using a logo developed by the City for use in the promotion of City-affiliated projects.



**CITY OF AUSTIN  
SCOPE OF WORK  
EB-5 REGIONAL CENTER  
SOLICITATION NO. RFQS JRD0502**

- 2.2.5. The City and Regional Center conduct quarterly working meetings to measure the outcomes between the City and Regional Center EB-5 projects using the reporting template in Attachment B.

2.3. About City-Affiliated Projects

City-affiliated projects shall meet one of the following criteria:

- 2.3.1. Sponsored, endorsed or, funded, wholly or in part, by the City.
- 2.3.2. Include City participation through a third-party agreement, such as a ground lease, economic development agreement, developer participation agreement, or agreements pertaining to facilities constructed by private entities in conjunction with reliance on the City's endorsements pursuant to the Texas Major Events Trust Fund Act ([http://www.texasahead.org/tax\\_programs/event\\_fund/metf.php](http://www.texasahead.org/tax_programs/event_fund/metf.php)), or written City endorsement as a urban redevelopment project that significantly further community-adopted goals of Imagine Austin.
- 2.3.3. Fall within these Target Sectors: Housing, Digital Inclusion, Advanced Manufacturing, Clean Energy & Power Technology, Creative & Digital Media, Corporate Headquarters & Regional Offices, Life Sciences & Technology integration, Space Technology & Exploration, Distribution & Logistics, Fashion, Food, Mobility Innovations of Automotive & Aerospace, and Zero Waste. See definitions in Section 3.
- 2.3.4. According to the parameters and guidelines of calculating Target Employment Areas (TEA) by the United States Citizenship and Immigration Service census tract methodology, the City will also allow projects that meet the standard TEA calculation methodology noted on the Impact DataSource map: <http://impactdatasource.maps.arcgis.com/apps/webappviewer/index.html?id=691f6ead1ec24e25ac71a6e64c5840d3> as well as authorize the specific use of block groups.

If block groups are utilized, block groups must meet the USCIS census tract standards within city council district boundaries of district 1, 2 and 3.

- 2.3.5. **City-affiliated projects shall NOT have any of the following characteristics. Other criteria may be established in the future.**

- 2.3.5.1. Location outside of the City of Austin's Desired Development Zone: [https://www.austintexas.gov/sites/default/files/files/Watershed/watershed\\_regs\\_map.pdf](https://www.austintexas.gov/sites/default/files/files/Watershed/watershed_regs_map.pdf)
- 2.3.5.2. Pending litigation with the City by a company involved in the project.
- 2.3.5.3. With a company that is currently debarred or suspended from doing business with the City.

**3. DEFINITIONS**

- 3.1. **EB-5 Regional Center:** any economic unit, public or private, which is involved with the promotion of economic growth, improved regional productivity, job creation, and increased domestic capital investment in compliance with the EB-5 statutory, regulatory, and precedent decision framework.
- 3.2. **EB-5 Immigrant Investor Program:** promotes the immigration of people who can help create jobs for U.S. workers through their investment of capital into the U.S. economy. EB-5 investors may be eligible for an EB-5 immigrant visa if they have invested – or are actively in the process of investing - the required amount of capital into one of the following for-profit business-types:

**CITY OF AUSTIN  
SCOPE OF WORK  
EB-5 REGIONAL CENTER  
SOLICITATION NO. RFQS JRD0502**

- A new commercial enterprise (created after 11/29/1990);
- An enterprise which will expand to 140% of pre-investment net worth or number of employees, or;
- A troubled business in which jobs will be preserved.

The standard capital investment requirement for an EB-5 investor is \$1 million, or in a Rural Area (RA) is \$500,000. The capital investment requirement for an EB-5 investor in a TEA which is either in a high unemployment area, (calculated as an area with an unemployment rate that is at least 150% of the national average).

- 3.3. **Contractor:** a person, firm, or entity that submits a response to this Request for Qualifications. Any Contractor may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
- 3.4. **Austin's Desired Development Zone:** according to the Austin City Code, "means the area not within the drinking water protection zone." The Drinking Water Protection Zone "means the areas within the Barton Springs Zone, the Barton Creek watershed, all water supply rural watersheds, and all water supply suburban watersheds, as described in Section 25-8-2 (Descriptions of Regulated Areas), which are in the planning jurisdiction."
- 3.5. **Preferred Vendor:** the primary regional center that is selected to execute EB-5 investment projects that are sourced and approved by the City of Austin. Preferred vendor status, however, does not preclude the City of Austin from engaging EB-5 investment projects sourced and proposed by third-party vendors.
- 3.6. **Target Sectors:**
- **Housing:** multi-family affordable housing that increases livable density in Austin.
  - **Digital Inclusion:** Enterprises involved in increasing the ability of individuals and groups to access and use information and communications technology.
  - **Advanced Manufacturing:** Convergence technologies that drive telecommunications, software, media, automotive, computer, semiconductor, and related industries.
  - **Clean Energy & Power Technology:** The sector is a set of technologies and services developed across a number of industries in response to concerns about climate change, energy security, and resource depletion. Projects such as clean tech manufacturing are favorable.
  - **Creative & Digital Media:** Businesses that engage and promote music production, music video, tour, and recording services, performers, and commercial music; film and visual media (including film, television, and commercial production); gaming, digital media, and post production services; not-for-profit arts groups; and visual arts (galleries, photographers, and other commercial visual artists)
  - **Life Sciences & Technology Integration:** Business and organizations that extend beyond health care providers to include biotechnology, scientific research and testing activities, and the manufacturing of medical products and devices, including medicine/pharmaceutical products.
  - **Space Technology & Exploration:** Business that operate in space exploration, satellites, launch providers, spacecraft components, in-space services, software, robotics, energy recovery systems (ERS), lithium-ion batteries, power cells, electrical power systems, renewable/alternative fuels, and engine control systems.
  - **Distribution & Logistics: Organizations:** involved in the part of supply chain management that plans, implements, and controls the efficient, effective forward, and reverse flow and storage of goods, services, and related information between the point of origin and the point of consumption in order to meet customer's requirements.
  - **Food Sector:** Spans locally produced and sourced agriculture to cottage and large sized local consumer packaged goods.
  - **Fashion:** Stretches the conventional definition of fashion to include the manufacturing and sourcing of ethically made textiles, Smart textiles, i.e. the miniaturization of electronics, and decreasing manufacturing costs of fabrics and electronic components.

**CITY OF AUSTIN  
SCOPE OF WORK  
EB-5 REGIONAL CENTER  
SOLICITATION NO. RFQS JRD0502**

- **Mobility Innovations:** Transportation infrastructure improvements and blends of the latest innovations that cross pollinate over the two markets automotive and aerospace.
- **Zero Waste:** Technologies and services developed that address climate change, energy security, and resource depletion.

3.7. **Imagine Austin:** The City of Austin's Comprehensive Plan adopted in 2012. A core goal of the Plan to foster a more intensively developed urban form through development of mixed-use activity centers supported by higher density development and accessible through different modes of transit. <http://www.austintexas.gov/department/imagine-austin>

#### **4. TASKS/REQUIREMENTS**

##### **4.1. Contractor's Responsibilities**

4.1.1. The Contractor shall designate itself as a City of Austin Regional Center (CARC).

4.1.2. The Contractor shall be solely responsible for the operation of the CARC including, without limitation, the services as set forth below:

- 4.1.2.1. forming investments that will assemble EB-5 capital and, where appropriate, invest such capital within the Austin corporate city limits in compliance with the U.S. Immigration and Nationality Act and Securities Laws;
- 4.1.2.2. sourcing immigrant investors with lawfully obtained capital, which includes cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the immigrant investor, provided that the immigrant investor is personally and primarily liable and the assets of the immigrant investor do not include assets of the company in which the immigrant is investing;
- 4.1.2.3. screening investors to ensure they (i) qualify as accredited investors as defined in Regulation D under the U.S. Securities Act of 1933, as amended, and (ii) are qualified to invest in the applicable Manager Funds under applicable federal and state securities laws and the securities laws of any foreign jurisdictions that apply to such investors;
- 4.1.2.4. implementing and managing a due diligence process in compliance with applicable regulations (i) to establish how investors shall be required to identify all sources of capital and document that such investor was lawfully obtained pursuant to 8 CFR 204.6(m)(3)(iii), as amended, and (ii) screening potential investors for eligibility under all applicable regulations, including, without limitation, the U.S. State Department Non-Proliferation Sanctions lists, the U.S. Treasury Office of Foreign Assets Control Specially Designated Nationals List and the U.S. Commerce Department Bureau of Industry and Security lists;
- 4.1.2.5. implementing a procedure to facilitate the filing of I-526 petitions with USCIS by prospective investors;
- 4.1.2.6. implementing a compliance program in accordance with and responsive to USCIS regulatory requirements;
- 4.1.2.7. identifying investment opportunities that will involve the deployment of EB-5 capital within the Austin corporate city limits;
- 4.1.2.8. assessing business plans and the business experience and skills of individuals in order to effectively deploy EB-5 investment funds;

**CITY OF AUSTIN  
SCOPE OF WORK  
EB-5 REGIONAL CENTER  
SOLICITATION NO. RFQS JRD0502**

- 4.1.2.9. managing the investments of the Manager Funds in compliance with the Immigration and Nationality Act (INA) and U.S. securities laws;
- 4.1.2.10. delivering regular reports to USCIS pursuant to the INA and other applicable requirements;
- 4.1.2.11. developing and implementing procedures to facilitate the filing by prospective Investors of I-829 petitions with USCIS;
- 4.1.2.12. pursuing an investment strategy that (i) is focused on investment opportunities that seek to generate growth and create jobs within the CARC and specifically within the Austin corporate city limits, and (ii) seeks to provide investors with a rate of return that is reasonably competitive;
- 4.1.2.13. actively promoting the CARC to qualifying investors;
- 4.1.2.14. using commercially reasonable efforts to promote the CARC to (i) contacts within the City, and (ii) other firms and organizations that can provide sources of appropriate investment transactions for the Manager Funds; (ii) developing a website and online presence for the (CARC); and (iii) collaborating with the City with respect to the use of the City's name, emblems, logos or official seal (collectively, "City IP") in any promotional or offering materials for the Contractor and/or any Manager Funds (collectively, "Marketing Materials"), provided the Contractor will only use pre-approved City IP in its Marketing Materials.
- 4.1.3. Contractor shall review strategies for how the City can encourage the use of EB-5 financing to accelerate economic development and job creation.
- 4.1.4. Contractor shall determine the most effective protocol to identify and communicate potential City-affiliated projects that may qualify for and benefit from EB-5 financing and work in cooperation with the City to access EB-5 investment financing.
- 4.1.5. Contractor shall consider strategies that may foster the use of EB-5 funds as a source for public projects constructed by the City.
- 4.1.6. Contractor shall provide quarterly and annual portfolio reports within one (1) month of the end of the event date, or at a time mutually agreed to between the Contractor and Contract Manager. Other reporting documentation shall be provided within one (1) month of request made by the City.
- 4.1.7. Contractor shall deliver to the City the fees in accordance to the agreed upon fee schedule. At a minimum the Contractor shall deliver to the City 1% of completed investment project funds in accordance with projects that receive a City sponsorship or endorsement.



**CITY OF AUSTIN  
PURCHASING OFFICE  
PREPARATION INSTRUCTIONS AND EVALUATION FACTORS  
SOLICITATION NUMBER: RFQS JRD0502**

**1. RESPONSE FORMAT:**

Submit one (1) original and one (1) flash drive that contain an exact electronic replica of the Response. The original Response shall contain original ink signatures by a person authorized to sign on behalf of the Offeror. Responses shall be typed on standard paper and have consecutively numbered pages. Responses shall be organized in the following format and information sequence. Use tabs to divide each part of your Response and include a Table of Contents. Respondents should provide all details in the Response as required in the Section 0500 - Scope of Work and any additional information you deem necessary to evaluate your Response.

**Tab 1 – Executive Summary**

Provide an Executive Summary of three (3) pages or less, which gives in brief concise terms, a summation of the Response.

**Tab 2 – City of Austin Purchasing Documents:**

Complete and submit the following documents:

- A. Offer and Award Sheet
- B. Section 0700 - Reference Sheets (minimum of 3)
- C. Completed and Signed Section 0900 No Goals Utilization Plan (if applicable). ***If you will be utilizing subcontractors, you must contact the Small and Minority Business Resources Department (SMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service and include the completed 0900 No Goals Utilization Plan with your response packet.***
- D. Addendums

**Tab 3 – Authorized Negotiator:**

Include name, address, and telephone number of person in your organization authorized to negotiate Contract terms and render binding decisions on Contract matters.

**Tab 4 – Organizational Capacity (30 Points):**

Provide the following information:

- A. Full name and address of your company and identify parent company if you are a subsidiary. Specify the branch office or other subordinate element which will perform, or assist in performing the work. Indicate whether you operate as a partnership, corporation, or individual. Include the State(s) in which incorporated or licensed to operate. Include how long has your company been in business.
- B. Provide an organizational overview including your organization's qualifications, expertise providing EB-5 services, experience with governmental agencies or municipalities, financial strength (income and cash flow statements, balance sheets, and assumptions), unique characteristics that sets your organization apart from your competition, and any quantifiable benefits that your organization provides. Letters of Recommendation that your company has received for similar projects and scope may be included.
- C. Include names, qualifications, and expertise of all key personnel that will be assigned to the Contract. Identify the contract manager and key personnel by name and title, state the primary work assigned to each person, and provide resumes for all personnel that will perform work under the resulting Contract (limit two pages per person). Provide a general explanation and chart which specifies project leadership, reporting responsibilities, and interface the Contractor's team with the City. If use of subcontractors is proposed, identify their placement in the primary management structure, and provide internal management description for each subcontractor. Do not include the experience of personnel who will not actively participate in the work of the resulting Contract.

**CITY OF AUSTIN  
PURCHASING OFFICE  
PREPARATION INSTRUCTIONS AND EVALUATION FACTORS  
SOLICITATION NUMBER: RFQS JRD0502**

- a. List years of experience and describe your team members' and consultants' experience in the following fields:
  - i. Economics and finance
  - ii. Securities law
  - iii. Immigration law
  - iv. Immigration agency in foreign countries, especially China
  - v. Escrow agency
  - vi. Immigrant investor programs
  - vii. Various types of bonds
  - viii. Developing a capital stack
  - ix. Tax Credits
  - x. Loan Funds
  - xi. Federal programs
- D. Include a description of all, past, pending, or threatened litigation, proceedings (include arbitrations), administrative proceedings, governmental investigations or inquiries affecting your Regional Center over the past five years. The description should include the name of the proceeding, the other parties, the relief demanded and the current status.
- E. Provide a list of all material licenses, authorizations, consents, permits, qualifications and approvals issued to the Regional Center by any United States federal, state, municipal, foreign or other governmental authority in connection with the operation of the Regional Center's business (collectively, "Permits"). Provide copies of all Permits.

**Tab 5 – Qualifications (35 Points):**

Provide written and specific responses to each of the following requests and questions. Do not include general marketing literature:

- A. In a detailed narrative or flowchart, describe your company's experience soliciting investors, subscribing or engaging those investors, and addressing or compiling the USCIS requirements in connection with the EB-5 process. Provide a detailed narrative or flowchart showing the standard immigration compliance process used for EB-5 programs.
- B. Address your organization's experience and financial capabilities to successfully market, attract, and execute investments on behalf of EB-5 investors. Include the following:
  - a. Provide a list of secured investments
  - b. Describe your investors markets targeted
  - c. Describe your process for finding new EB-5 investors
- C. Describe the nature of business relationships in countries with high numbers of EB-5 investors, especially China.
- D. Describe your experience completing real estate development or other relevant projects in the Austin region.
- E. Describe your track record of success with the EB-5 program, including the following:
  - a. Copy of your organization's approved plans from USCIS.
  - b. Description of **COMPLETED** EB-5 projects that have met the two-year job creation criteria, including the following:
    - i. Amount of EB-5 capital raised for each project and marketing efforts used to secure EB-5 investors
    - ii. Amount of time taken to raise money from EB-5 investors to fund the project(s)

**CITY OF AUSTIN  
PURCHASING OFFICE  
PREPARATION INSTRUCTIONS AND EVALUATION FACTORS  
SOLICITATION NUMBER: RFQS JRD0502**

- iii. Amount of investment leveraged by EB-5 capital raised
  - iv. Details on job creation (verifiable direct and indirect jobs) and economic impact
  - v. Investment returns to EB-5 investors
  - vi. Background and country of origin of EB-5 investors
  - vii. Financing structure
  - viii. At least three references (name, title, address, and phone number) for each project from developers/project sponsors that can speak to your completed projects.
- c. Description of **INCOMPLETE** EB-5 projects and explanation of why the project(s) was not successful.
- d. Detailed description of your process for selecting EB-5 investment projects and your due diligence process for each project.
- e. Number and percentage of successful I-829 Petitions for Removal of Conditions by the Regional Center's investors.
- f. Number and percent of projects reviewed by your regional center against the number of projects your regional center dedicated funding to.
- F. List and describe your target investment project types. Be specific to each real estate, infrastructure, and business category.
- G. Describe your membership in Invest in the United States of America (IIUSA) or any other industry trade association for the EB-5 Immigrant Investor Program.
- H. List and describe your formal agreements with other governmental entities for EB-5 program services, including municipalities. The City may request copies of these agreements.

**Tab 6 – Expertise & Strategies (35 Points):**

Provide a response based on your expertise and the strategies your organization has utilized with similar projects:

- A. Strategy utilized to encourage and promote collaboration between the customer and your organization for the marketing of City-Affiliated Projects. Please address the following:
- a. Your expertise on how to stimulate economic development and job creation in Austin.
  - b. Your philosophy and financial capabilities for creating and maintaining the structure and administration of this collaboration.
  - c. An explanation of the resources the City would need to dedicate for your structure and administration.
  - d. Your strategy, methodology and expectations for collaborating and fostering ongoing communications with the City.
- B. Provide your organization's strategy to market City-Affiliated Projects. Include:
- a. How your organization markets City-Affiliated Projects as EB-5 projects, include feedback based on the City's listed approach.
  - b. Your strategy and expertise in assisting the City with determining City-Affiliated Projects to be marketed by your organization as EB-5 projects, including what modifications, if any, you suggest to improve upon the criteria and process. Please refer to working strategies employed with other governmental entities for which you have a contractual relationship.

**CITY OF AUSTIN  
PURCHASING OFFICE  
PREPARATION INSTRUCTIONS AND EVALUATION FACTORS  
SOLICITATION NUMBER: RFQS JRD0502**

- c. Your target investor markets for this collaboration and describe the regions of the world where you have and/or intend to have relationships with agents and other parties representing potential EB-5 investors.
  - d. Your strategy to market projects in these target markets. Include your expertise and approach for obtaining EB-5 investors.
  - e. How your organization expects to compensate your agents.
  - f. Samples of annual, quarterly, and other reports your organization provides to similar governmental agencies.
- C. Describe your expertise in funding projects prior to I-526 and/or I-829 approval.

**Tab 7 – Exceptions: Include form in the response package (Attachment A)**

Respondents shall clearly indicate each exception taken and indicate the alternative language along with the business need for the alternative language. The failure to identify exceptions or proposed changes with a full explanation will constitute acceptance by the Respondent. The City reserves the right to reject a Response containing exceptions, additions, qualifications or conditions not called for in the Solicitation.

**Tab 8 – Acceptance Period:**

All Responses are valid for a period of one hundred and eighty (180) calendar days subsequent to the RFQS closing date unless a longer acceptance period is offered in your Response.

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

- i. 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.
- ii. 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.
- iii. If a Respondent 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 Respondent is given written notice and a hearing in advance of the debarment.
- iv. Offerors submitting Offers and signing the Cover Sheet on this Solicitation agree to Section 0810, Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit certifying that the Offeror has not 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>



**CITY OF AUSTIN  
PURCHASING OFFICE  
PREPARATION INSTRUCTIONS AND EVALUATION FACTORS  
SOLICITATION NUMBER: RFQS JRD0502**

**3. PROPRIETARY INFORMATION:**

All material submitted to the City becomes public property and is subject to the Texas Open Records Act upon receipt. If a Respondent does not desire proprietary information in the Response to be disclosed, each page must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

**4. PREPARATION COST:**

All costs directly or indirectly related to preparation of a response to the RFQS or any oral presentation required to supplement and/or clarify a response, which may be required by the City shall be the sole responsibility of the Respondent.

**5. EXCEPTIONS:**

Be advised that exceptions to any portion of the Solicitation may jeopardize acceptance of the Response.

**6. EVALUATION FACTORS AND AWARD:**

i. **Competitive Selection:** This procurement will comply with applicable City of Austin Policy. The City, on a rational basis, will select the successful Respondent. Evaluation factors outlined in Paragraph (ii) below shall be applied to all eligible, responsive Respondents in comparing Responses and selecting the successful Respondent. Award of a contract may be made without discussion with Respondents after Responses are received. Responses should, therefore, be submitted on the most favorable terms.

ii. **Evaluation Factors: Maximum 100 points.**

All Responses will be evaluated based on the following criteria and rankings.

- |   |                    |
|---|--------------------|
| 1. <b>Organizational Capacity:</b>  | <b>(30 points)</b> |
| 2. <b>Qualifications:</b>   | <b>(35 points)</b> |
| 3. <b>Expertise &amp; Strategies:</b>   | <b>(35 points)</b> |
| 4. <b>Optional Presentations and Demonstrations.</b> The City will score responses on the basis of the criteria listed above. The City may select a "short list" of Respondents based on those scores. "Short-listed" Respondents may be invited for presentations, or demonstrations with the City. The City reserves the right to re-score "short-listed" responses as a result, and to make award recommendations on that basis. |                    |

## **Section 0700: Reference Sheet**

Responding Company Name \_\_\_\_\_

The City at its discretion may check references in order to determine the Offeror's experience and ability to provide the products and/or services described in this Solicitation. The Offeror shall furnish at least 3 complete and verifiable references. References shall consist of customers to whom the offeror has provided the same or similar services within the last 5 years. References shall indicate a record of positive past performance.

1. Company's Name \_\_\_\_\_

Name and Title of Contact \_\_\_\_\_

Project Name \_\_\_\_\_

Present Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Telephone Number (\_\_\_\_) \_\_\_\_\_ Fax Number (\_\_\_\_) \_\_\_\_\_

Email Address \_\_\_\_\_

2. Company's Name \_\_\_\_\_

Name and Title of Contact \_\_\_\_\_

Project Name \_\_\_\_\_

Present Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Telephone Number (\_\_\_\_) \_\_\_\_\_ Fax Number (\_\_\_\_) \_\_\_\_\_

Email Address \_\_\_\_\_

3. Company's Name \_\_\_\_\_

Name and Title of Contact \_\_\_\_\_

Project Name \_\_\_\_\_

Present Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Telephone Number (\_\_\_\_) \_\_\_\_\_ Fax Number (\_\_\_\_) \_\_\_\_\_

Email Address \_\_\_\_\_

**City of Austin, Texas**  
**NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION**

**City of Austin, Texas**

**Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy**

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

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

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

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

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

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

**Sanctions:**

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

**Term:**

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



**City of Austin, Texas**  
**Section 0805**  
**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. 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.

**CITY OF AUSTIN, TEXAS  
SECTION 0810  
NON-COLLUSION,  
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION**

The term “**Offeror**”, as used in this document, includes the individual or business entity submitting the Offer. For the purpose of this Affidavit, an Offeror includes the directors, officers, partners, managers, members, principals, owners, agents, representatives, employees, other parties in interest of the Offeror, and any person 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 no individual, agent, representative, consultant, subcontractor, or sub-consultant 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 \$100 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that City is considering doing business with the Offeror. and
  - c. does not have a family relationship with a local government officer of the City in the third degree of consanguinity or the second degree of affinity.
7. 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.austintexas.gov/departments/conflict-interest-questionnaire>

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 with any solicitation responses on separate pages to be annexed hereto.

8. **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 City official or to a City employee, other than the Authorized Contact Person for the Solicitation, except as permitted by the Ordinance.

**Section 0900: Minority- and Women-Owned Business Enterprise (MBE/WBE) Procurement Program No Goals Form**

SOLICITATION NUMBER: JRD0502

PROJECT NAME: EB-5 REGIONAL CENTER

**The City of Austin has determined that no goals are appropriate for this project.** Even though goals were not assigned for this solicitation, the Bidder/Proposer is required to comply with the City's MBE/WBE Procurement Program, if areas of subcontracting are identified.

If any service is needed to perform the Contract and the Bidder/Proposer does not perform the service with its own workforce or if supplies or materials are required and the Bidder/Proposer does not have the supplies or materials in its inventory, the Bidder/Proposer shall contact the Small and Minority Business Resources Department (SMBR) 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 Bidder/Proposer 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** \_\_\_\_\_ **If no, please sign the No Goals Form and submit it with your Bid/Proposal in a sealed envelope**

**Yes** \_\_\_\_\_ **If yes, please contact SMBR 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 Bid/Proposal 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, sub-consultant, or supplier. Return the completed Plan to the Project Manager or the Contract Manager.**

**I understand that even though goals were not assigned, 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.**

\_\_\_\_\_  
**Company Name**

\_\_\_\_\_  
**Name and Title of Authorized Representative (Print or Type)**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

**Minority- and Women-Owned Business Enterprise (MBE/WBE) Procurement Program No Goals Utilization Plan** (Please duplicate as needed)

SOLICITATION NUMBER: JRD0502

PROJECT NAME: EB-5 REGIONAL CENTER

**PRIME CONTRACTOR / CONSULTANT COMPANY INFORMATION**

Name of Contractor/Consultant			
Address			
City, State Zip			
Phone Number		Fax Number	
Name of Contact Person			
Is Company City certified?	Yes <input type="checkbox"/> No <input 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)**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

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

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

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

**FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:**

Having reviewed this plan, I acknowledge that the proposer (HAS) or (HAS NOT) complied with City Code Chapter 2-9A/B/C/D, as amended.

**Reviewing Counselor** \_\_\_\_\_ **Date** \_\_\_\_\_ **Director/Deputy Director** \_\_\_\_\_ **Date** \_\_\_\_\_



# ATTACHMENT A



## CITY OF AUSTIN PURCHASING OFFICE EXCEPTIONS

**Solicitation Number:** RFQS JRD0502

The City will presume that the Respondent is in agreement with all sections of the solicitation unless the Respondent takes specific exception as indicated below. The City, at its sole discretion, may negotiate exceptions to the sections contained in the solicitation documents or the City may deem the Respondent non-responsive. The Respondent that is awarded the contract shall sign the contract with the accepted or negotiated sections.

Place this attachment in Tab 7 – Exceptions. Copies of this form may be utilized if additional pages are needed.

☐ Accepted as written.

☐ Not accepted as written. See below:

**Indicate:**

- ☐ **0300 Standard Purchase Terms & Conditions**
- ☐ **0400 Supplemental Purchase Provisions**
- ☐ **0500 Scope of Work**

**Page Number**

**Section Number**

**Section Description**

**Alternative Language:**

**Justification:**

**ATTACHMENT B  
QUARTERLY REPORTING TEMPLATE**

Reporting Description	Q1	Q2	Q3	Q4	Narrative Required
# of Inquiries by Foreign Investors					Yes. Identify countries of origin of inquiries, project types of interest
# of Projects seeking EB-5 Investment					No.
\$ of Project seeking EB-5 Investment					No.
# of Projects currently raising EB-5 funds					Yes. Identify project name.
# of Projects under construction with EB-5 Investment					Yes. Identify project name.
# of Projects completed					Yes. Identify project name.
# of Jobs Created					Yes. Identify how many of those jobs are fulltime, part-time, and contract positions.
Average Wage Earned by Jobs Created					Yes. List average wage for fulltime employees, part-time employees and contract positions.
Type of educational attainment needed to acquire those jobs.					Yes. List attainment required as license/ certification, high school, associate's, bachelor's, master's, or PhD. Also list the educational disciplines required.

**ATTACHMENT C**  
**FIGURES AND TABLES DEPICTING AUSTIN'S ECONOMY**

**City of Austin Historical Taxable Assessed Valuation**

Fiscal Year Ended 9-30	Estimated City Population (1)	Taxable Assessed Valuation	Per Capita Taxable Assessed Valuation	(000's) Net Funded Tax Debt (2)	Per Capita Net Funded Tax Debt	Ratio of Net Funded Tax Debt to Taxable Valuation	% of Tax Collections
2006	714,237	\$52,349,642,297	\$ 73,295	\$943,312	\$1,320.73	1.80%	99.85%
2007	732,381	60,512,328,889	82,624	869,974	1,187.87	1.44%	99.83%
2008	746,105	68,736,790,926	92,128	907,667	1,216.54	1.32%	99.70%
2009	770,296	76,752,007,737	99,640	1,065,565	1,383.32	1.39%	99.57%
2010	778,560	80,960,540,976	103,988	1,002,186	1,287.23	1.24%	99.22%
2011	805,662	77,619,349,384	96,342	1,049,751	1,302.89	1.35%	99.42%
2012	821,012	79,219,780,879	96,490	1,132,201	1,379.03	1.43%	99.27%
2013	841,629	83,294,536,493	98,966	1,198,730	1,424.26	1.44%	99.36%
2014	853,020	88,548,568,973	103,806	1,113,392	1,305.24	1.26%	99.78% (3)
2015	872,481	98,732,872,327(4)	113,163	1,156,948(5)	1,326.04(5)	1.17%(5)	N/A

- (1) Source: City of Austin Department of Planning and Development based on full purpose area as of April 1.  
(2) Excludes general obligation debt issued for enterprise funds and general fund departments which transfer-in from Operating Budget.  
(3) Estimated Collections as of June 30, 2014 based on the July 2013 Certified Tax Roll tax levy.  
(4) Certified taxable value for the 2014 tax year.  
(5) Includes the Obligations.

**ATTACHMENT C**  
**FIGURES AND TABLES DEPICTING AUSTIN'S ECONOMY**

**City of Austin Tax Rate, Levy and Collection History**

Fiscal Year Ended 9-30	Total Tax Rate	Distribution		Tax Levy	% Current Collections	% Total Collections
		General Fund	Interest and Sinking Fund			
2006	\$0.4430	\$0.2841	\$0.1589	\$231,908,915	99.55%	99.85%
2007	0.4126	0.2760	0.1366	249,673,869	99.61%	99.83%
2008	0.4034	0.2730	0.1304	277,284,215	99.14%	99.70%
2009	0.4012	0.2749	0.1263	307,929,055	99.03%	99.57%
2010	0.4209	0.2950	0.1259	340,762,917	98.97%	99.22%
2011	0.4571	0.3262	0.1309	354,798,046	99.13%	99.42%
2012	0.4811	0.3551	0.1260	381,126,366	99.27%	99.27%
2013	0.5029	0.3821	0.1208	418,888,224	99.36%	99.36%
	0.5027	0.3856	0.1171	445,133,656	99.27%	99.78% (1)
2014					(1)	
2015 (2)	0.4798	0.3680	0.1118	473,720,321	N/A	N/A

(1) Estimated collections as of June 30, 2014 based on the July 2013 Certified Tax Roll tax levy.

Preliminary, subject to change pending adoption of the tax rate, expected to occur on or about September 10, 2014.

**City of Austin Ten Largest Taxpayers**

<u>Name of Taxpayer</u>	<u>Nature of Property</u>	<u>January 1, 2013 Taxable Assessed Valuation</u>	<u>% of Total Taxable Assessed Valuation</u>
Samsung Semiconductor LLC	Manufacturing	\$2,478,991,304	2.51%
Parkway Properties LLC	Commercial	747,257,757	0.76%
Columbia/St Davids Healthcare	Commercial	455,730,685	0.46%
Circuit of the Americas LLC	Commercial	289,137,087	0.29%
IBM Corporation	Manufacturing	245,745,471	0.25%
IMP Capital II Riata LP	Commercial	236,598,167	0.24%
Finley Company	Commercial	217,426,375	0.22%
Riata Holdings LP	Commercial	201,136,903	0.20%
HEB Grocery Company	Commercial	196,985,175	0.20%
G&I VII Barton Skyway LP	Commercial	195,691,483	0.20%
TOTAL		<u>\$5,264,700,407</u>	<u>5.33%</u>

Source: Travis Central Appraisal District.

**ATTACHMENT C**  
**FIGURES AND TABLES DEPICTING AUSTIN'S ECONOMY**

**City of Austin Municipal Sales Tax**

At an election held on September 30, 1967, the citizens of Austin voted a 1% retail sales and use tax to become effective on January 1, 1968. This tax provides an additional revenue source to the General Fund of the City. Collections and enforcements are effected through the offices of the Comptroller of Public Accounts of the State of Texas, who currently remits the proceeds of the tax to the City monthly. Revenue from this source has been:

<u>Fiscal Year</u> <u>Ended 9-30</u>	<u>Per Capita</u> <u>Sales and Use</u> <u>Tax</u>	<u>(in 000's)</u> <u>Sales and Use</u> <u>Tax</u>	<u>% of</u> <u>Ad Valorem Tax</u> <u>Levy</u>
2006	\$196.75	\$139,289	60.06%
2007	211.43	153,098	61.32%
2008	207.00	154,445	55.70%
2009	182.51	139,795	45.40%
2010	185.87	144,710	42.47%
2011	187.58	151,125	42.59%
2012	199.99	164,193	43.08%
2013	209.35	176,198	42.06%
2014 (1)	221.41	188,867	42.43%
2015 (2)	227.29	198,310	41.86%

(1) Estimate.

(2) Estimate used in FY 2015 Proposed Budget.

**Austin's Ten Largest Employers** (As of September 30, 2013)

<u>Employer</u>	<u>Product or Service</u>	<u>Employee</u> <u>s</u>
State Government	State Government	36,948
The University of Texas at Austin	Education	24,183
Dell Computer Corporation	Computers	14,000
Seton Healthcare Network	Healthcare	12,609
City of Austin	City Government	12,372
Austin Independent School District	Education	11,465
HEB Grocery	Grocery/Retail	11,277
Federal Government	Government	10,500
St. David's Healthcare Partnership	Healthcare	7,950
IBM Corporation	Computers	6,500

Source: 2013 Comprehensive Annual Financial Report.



**ATTACHMENT C**  
**FIGURES AND TABLES DEPICTING AUSTIN'S ECONOMY**

**City of Austin Demographic and Economic Statistics - Last Ten Years**

<u>Year</u>	<u>City of Austin Population (1)</u>	<u>Area of Incorporation (Square Miles) (1)</u>	<u>Population MSA (2)</u>	<u>Income (MSA) (thousands of dollars) (2)</u>	<u>Median Household Income MSA (3)</u>	<u>Capita Personal Income MSA (2)</u>	<u>Unemployment Rate (MSA) (4)</u>
2004	683,551	291	1,423,161	\$46,134,871	\$39,227	\$32,417	5.1%
2005	695,881	294	1,464,563	51,058,588	40,335	34,863	4.5%
2006	714,237	296	1,528,958	56,105,872	40,888	36,695	4.2%
2007	732,381	297	1,577,856	59,924,200	42,263	37,978	3.7%
2008	746,105	298	1,633,870	65,153,669	46,340	39,877	4.4%
2009	770,296	302	1,682,338	64,383,075	47,520	38,270	6.8%
2010	778,560	306	1,727,661	67,582,224	48,460	39,118	7.1%
2011	805,662	308	1,780,708	74,168,909	46,689	41,651	6.8%
2012	821,012	319	1,834,303	78,695,523	46,436	42,902	5.8%
2013	841,649	321	1,912,746 (6)	84,931,866 (5)	49,227	44,403 (5)	5.3%
2004-2013 Change	23.13%	10.31%	34.40%	84.09%	25.49%	36.97%	

Note: Prior year statistics are subject to change as more precise numbers become available.

- (1) Source: City Demographer, City of Austin, Neighborhood Planning and Zoning Department based on full purpose area as of September 30.
- (2) Source: Bureau of Economic Analysis for all years except 2013 which will not be available until after first quarter 2014.
- (3) Source: Claritas, a Nielson Company.
- (4) Source: Bureau of Labor Statistics; United States Department of Labor as of September 30.
- (5) Data not available for 2013. Figures are estimated.
- (6) Source: PFM CBK – CBSA 2013.

**Austin Residential Sales Data**

<u>Year</u>	<u>Number of Sales</u>	<u>Total Volume</u>	<u>Average Price</u>
2004	22,567	\$4,487,464,528	\$198,900
2005	26,905	5,660,934,916	210,400
2006	30,284	6,961,725,607	229,900
2007	28,048	6,910,962,480	246,400
2008	22,440	5,470,518,171	243,800
2009	20,747	4,924,240,373	237,300
2010	19,872	4,906,445,110	246,900
2011	21,208	5,336,642,011	251,600
2012	25,521	6,786,966,004	266,000
2013	30,419	8,714,544,439	286,500

**ATTACHMENT C**  
**FIGURES AND TABLES DEPICTING AUSTIN'S ECONOMY**

---

Note: Information is updated periodically, data contained in this document is latest provided.  
Source: Real Estate Center at Texas A&M University.

**ATTACHMENT C**  
**FIGURES AND TABLES DEPICTING AUSTIN'S ECONOMY**

**City-Wide Austin Office Occupancy Rate**

<u>Year</u>	<u>Occupancy Rate</u>
2004	80.8%
2005	84.2%
2006	87.5%
2007	85.6%
2008	80.6%
2009	77.7%
2010	80.0%
2011	82.7%
2012	86.8%
2013	89.2%

---

Source: Oxford Commercial.



## City of Austin FSD Purchasing Office

### Certificate of Exemption

DATE: 12/01/2016

DEPT: Economic Development Department

TO: Purchasing Officer or Designee

FROM: Casey Smith

BUYER: Jonathan Dalchau

PHONE: (512) 974-6416

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)
  - ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
  - ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
  - ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
  - ☒ a procurement for personal, professional, or planning services
  - ☐ a procurement for work that is performed and paid for by the day as the work progresses
  - ☐ a purchase of land or right-of-way
  - ☐ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
  - ☐ a purchase of rare books, papers, and other library materials for a public library
  - ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
  - ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391
- ☐ services performed by blind or severely disabled persons
- ☐ goods purchased by a municipality for subsequent retail sale by the municipality
- ☐ electricity
- ☐ advertising, other than legal notices
- ☐ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

Professional Services are being sought by authorized Regional Investment Centers. These Regional Investment Centers are authorized only by the United States Customs and Immigration Services (USCIS) department. We are making a selection from the authorized Regional Investment Centers that apply to the solicitation. Any applicant that does not have authorization by USCIS will not be considered for this partnership.



4. Please attach any documentation that supports this exemption.

5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

We will undergo a thorough evaluation process of the applicants with authorization by USCIS with a selection committee of industry experts on staff with the City of Austin. We have an evaluation structure written into the RFQS

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with to be determined by the selection committee which will cost approximately \$ 0.00 (Provide estimate and/or breakdown of cost).

Revenue Contract

Recommended  
Certification

Originator

Date

Approved  
Certification

Department Director or designee

Date

Assistant City Manager / General Manager  
or designee (if applicable)

Date

Purchasing Review  
(if applicable)

Buyer

Date

Manager Initials

Exemption Authorized  
(if applicable)

Purchasing Officer or designee

Date

02/26/2013

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Texas Growth Fund Partners, LLC  
Austin, TX United States

Certificate Number:

2017-239812

Date Filed:

07/21/2017

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Austin

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

NR170000016

Revenue Contract

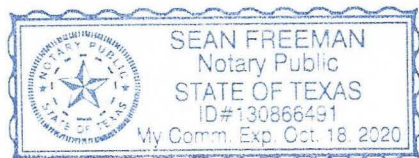
4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Edwards, Burke	Austin, TX United States	X	
	Gritz, Robert	Austin, TX United States	X	

5 Check only if there is NO Interested Party.

☐

### 6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



*[Signature]*  
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Robert Gritz, this the 21st day of July, 2017, to certify which, witness my hand and seal of office.

*[Signature]*  
Signature of officer administering oath

Sean Freeman  
Printed name of officer administering oath

Notary Public  
Title of officer administering oath