



Amendment No. 1  
to  
Contract No. NA170000183  
for  
Organics Processing Services  
between  
Employee Owned Nursery Enterprises, Ltd. dba Organics "By Gosh"  
and the  
City of Austin

1.0 The pricing for the item listed below has been approved. Revised pricing is effective October 1, 2018.

LINE ITEM	DESCRIPTION	UNIT	PREVIOUS UNIT PRICE	REVISED UNIT PRICE
1.4	Organic material sorting, tipping, and/or processing fees for Tier 4 (>550 tons)	PER TON	\$28.44	\$29.63

2.0 The total Contract amount is unchanged. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 10/2/2017 – 10/01/2020	\$1,510,000.00	\$1,510,000.00
Amendment No. 1: Price increase	\$0.00	\$1,510,000.00

3.0 MBE/WBE goals do not apply to this contract.

4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 All other terms and conditions remain the same.

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

**EMPLOYEE OWNED NURSERY  
ENTERPRISES, LTD. dba ORGANICS "BY  
GOSH"**

Signature

Donna Gosh,

Printed Name of Authorized Person

CFO

Title

9-25-18

Date

**CITY OF AUSTIN**

Signature

Sandy Wirtanen

Printed Name of Authorized Person

Procurement Specialist IV

Title

9/25/18

Date



## City of Austin

### Purchasing Office

P.O. Box 1088, Austin, TX 78767

September 29, 2017

Employee Owned Nursery Enterprises, Ltd., dba Organics "By Gosh"

Phil Gosh

CEO

PO Box 908

Del Valle, TX 78617

Dear Mr. Gosh:

The Austin City Council approved the execution of a contract with your company for organics processing services in accordance with the referenced solicitation.

Responsible Department:	Austin Resource Recovery
Department Contact Person:	Amy Slagle
Department Contact Email Address:	<a href="mailto:Amy.slagle@austintexas.gov">Amy.slagle@austintexas.gov</a>
Department Contact Telephone:	512-974-4302
Project Name:	Organics Processing Services
Contractor Name:	Employee Owned Nursery Enterprises, Ltd., dba Organics "By Gosh"
Contract Number:	MA 1500 NA170000183
Contract Period:	10/2/2017 – 10/1/2020
Dollar Amount	\$1,510,000.00
Extension Options:	N/A
Requisition Number:	RQM 1500 16020700256
Solicitation Type & Number:	RFP 1500 SLW0509REBID
Agenda Item Number:	30
Council Approval Date:	6/22/2017

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,

Sandy Wirtanen  
Procurement Specialist IV  
City of Austin  
Purchasing Office

**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
Employee Owned Nursery Enterprises, Ltd. dba Organics “By Gosh”  
For  
Organics Processing Services  
MA 1500 NA170000183**

This Contract is made by and between the City of Austin (“City”), a home-rule municipality incorporated by the State of Texas, and Employee Owned Nursery Enterprises, Ltd. dba Organics “By Gosh” (“Contractor”), having offices at 13602 FM 969, Austin, TX 78724.

**SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES**

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City’s Contract Manager will be responsible for exercising general oversight of the Contractor’s activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City’s interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City’s Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor’s Contract Manager for this engagement shall be Donna Gosh, Phone: (210) 286-3138, Email Address: djshavercpa@gmail.com. The City’s Contract Manager for the engagement shall be Amy Slagle, Phone: (512) 974-4302, Email Address: amy.slagle@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

**SECTION 2. SCOPE OF WORK**

2.1 **Contractor’s Obligations.** The Contractor shall fully and timely provide all deliverables described herein 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.

2.2 **Tasks.** The Contractor shall perform organics processing services for the City of Austin. In order to accomplish the work described herein, the Contractor shall perform each the tasks as described in the Scope of Work attached hereto as Exhibit A.

**SECTION 3. COMPENSATION**

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$1,510,000 for all fees and expenses.

3.2 **Economic Price Adjustment.**

3.2.1. **Price Adjustments.** Prices shown in this Contract shall remain firm for the first 12 months of the Contract. After that, in recognition of the potential for fluctuation of the Contractor’s cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed twenty-five percent (25%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more

line item made pursuant to this provision. Prices for product or services unaffected by verifiable cost trends shall not be subject to adjustment.

3.2.2 **Effective Date.** Approved price adjustments will go into effect on the first day of the upcoming anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.

3.2.3 **Adjustments.** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.

3.2.4 **Indexes.** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.

3.2.4.1 The following definitions apply:

3.2.4.1.1 **Base Period.** Month and year of the original contracted price (the solicitation close date).

3.2.4.1.2 **Base Price.** Initial price quoted, proposed and/or contracted per unit of measure.

3.2.4.1.3 **Adjusted Price.** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.

3.2.4.1.4 **Change Factor.** The multiplier utilized to adjust the Base Price to the Adjusted Price.

3.2.4.1.5 **Weight %.** The percent of the Base Price subject to adjustment based on an index change.

3.2.4.2 **Adjustment-Request Review.** Each adjustment-request received will be reviewed and compared to changes in the index identified below. Where applicable:

3.2.4.2.1 Utilize final Compilation data instead of Preliminary data

3.2.4.2.2 If the referenced index is no longer available shift up to the next higher category index.

3.2.4.3 **Index Identification.** Complete table as they may apply.

Weight % or \$ of Base Price: 100%	
Database Name: CPI – All Urban Customers	
Series ID: CUUR0300SA0	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: South Urban	
Description of Series ID: All Items	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: All	

3.2.5 **Calculation.** Price adjustment will be calculated as follows:

**Single Index.** Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation
Divided by index on solicitation close date
Equals Change Factor
Multiplied by the Base Rate
Equals the Adjusted Price

3.2.6 If the requested adjustment is not supported by the referenced index, the City, at its sole discretion, may consider approving an adjustment on fully documented market increases.

### 3.3 **Invoices.**

3.3.1 Invoices shall contain:

3.3.1.1 a unique invoice number,

3.3.1.2 the purchase order or delivery order number and the master agreement number, if applicable,

3.3.1.3 the Department's Name and the name of the point of contact for the Department,

3.3.1.4 Total tonnage of loads delivered for the month,

3.3.1.5 all invoices must be able to be connected to the detailed reports submitted monthly,

3.3.1.6 prorated billing for all services that are performed for less than the entire month covered by the invoice. Prorated bills shall note the ending and/or beginning date of the services being charged. The method(s) used by the Contractor to calculate prorated bills is subject to City approval,

3.3.2 Invoices shall be itemized. The Contractor's name on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below addresses:

	City of Austin
Department	Austin Resource Recovery Department
Attn:	Accounts Payable
Email Addresses:	<a href="mailto:ARR.AP@austintexas.gov">ARR.AP@austintexas.gov</a> and <a href="mailto:Amy.Slagle@austintexas.gov">Amy.Slagle@austintexas.gov</a>

3.3.3 The Contractor shall submit a monthly invoice to the City by the 10<sup>th</sup> day of each month which details the charges billed under the Contract for the previous calendar month.

3.3.4 All paperwork and weight tickets shall be in typed/data entry, computer generated format where possible and include supportive documentation and records to substantiate charges; however, where this is not possible, all invoices must be neatly printed and easily legible.

3.3.5 Flat-fee rates shall include all related costs, i.e. trip fee and fuel costs; therefore, no additional line item charges shall be authorized beyond the accepted flat-fee per ton rates as shown in Exhibit B, Price Proposal.

3.3.6 If performance is unacceptable, the Contractor shall be required to correct all problem areas within three business days of notification and payment shall be delayed until work is remedied. Where unsatisfactory performance is not remedied within three business days, the City reserves the right to 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.

3.3.7 Acceptance of all work performed under the executed contract shall be at the sole discretion of the Austin Resource Recovery (ARR) Contract Manager and/or designated personnel, and as monitored by the ARR Purchasing division.

### 3.4 **Payment.**

3.4.1 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.

**3.4.2 If payment is not timely made, (per this paragraph), 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.**

3.4.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

- 3.4.3.1 delivery of defective or non-conforming deliverables by the Contractor;
- 3.4.3.2 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;
- 3.4.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment to be used in the Contract;
- 3.4.3.4 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 for which the Contractor is liable;
- 3.4.3.5 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;
- 3.4.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
- 3.4.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.4.4 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.

3.4.5 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 transfer of funds.

3.5 **Non-Appropriation.** 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.

### 3.6 **Final Payment and Close-Out.**

3.6.1 The making and acceptance of final payment will constitute:

3.6.1.1 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

3.6.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

## SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall be in effect for an initial term of 36 months.

4.1.1 Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).

4.1.2 This is a 36 month Contract. Prices are firm for the first twelve (12) months.

4.2 **Quantities.** The quantities listed herein are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term.

4.3 **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.

4.4 **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 the “Right to Assurance paragraph herein, (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 Contractor to the City.

4.5 **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.

4.6 **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.

4.7 **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.

## **SECTION 5. OTHER DELIVERABLES**

5.1 **Insurance:** The following insurance requirements apply.

### **5.1.1 General Requirements.**

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 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 fourteen (14) calendar days after written request from the City.

5.1.1.3 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.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by 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.

5.1.1.5 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.

5.1.1.6 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.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

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

5.1.1.8 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.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, 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.

5.1.1.10 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.

5.1.1.11 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.

5.1.1.12 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.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to 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.

5.1.2 **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.

5.1.2.1 **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 Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Contractor/Subcontracted Work.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **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. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

5.1.2.3 **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. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.

## 5.2 **Equal Opportunity.**

5.2.1 **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.

5.2.2 **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.

5.3 **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 Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

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

5.4 **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.

5.5 **Delays.**

5.5.1 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 herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.5.2 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.

5.6 **Ownership And Use Of Deliverables.** The City shall own all rights, titles, and interests throughout the world in and to all written reports and submitted material.

5.7 **Rights to 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.

5.8 **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.

## **SECTION 6. WARRANTIES**

6.1 **Warranty – Price.**

6.1.1 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.

6.1.2 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.

6.1.3 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.

6.2 **Warranty – Services.** The Contractor warrants and represents that all services to be provided to 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.

6.2.1 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.

6.2.2 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.

## **SECTION 7. MISCELLANEOUS**

### **7.1 Workforce.**

7.1.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.1.2 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:

7.1.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.1.2.2 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.

7.1.3 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.

7.2 **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.

7.3 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.3.1 disposal of major assets;

7.3.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.3.3 any significant termination or addition of provider contracts;

7.3.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.3.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.3.6 reorganization, reduction and/or relocation in key personnel;

- 7.3.7 known or anticipated sale, merger, or acquisition;
- 7.3.8 known, planned or anticipated stock sales;
- 7.3.9 any litigation against the Contractor; or
- 7.3.10 significant change in market share or product focus.

#### 7.4 **Audits and Records.**

7.4.1 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.

##### 7.4.2 Records Retention:

7.4.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. 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 whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

7.4.2.2 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 requested by the City.

7.4.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.

7.5 **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.

#### 7.6 **Indemnity.**

##### 7.6.1 Definitions:

7.6.1.1 "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:

7.6.1.1.1 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;

7.6.1.1.2 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),

7.6.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.6.2 **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.**

**7.7 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 effect 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.

**7.8 Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and email, 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, email, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Sandy Wirtanen, Procurement Specialist IV

P O Box 1088

Austin, TX 78767

To the Contractor:

Employee Owned Nursery Enterprises, Ltd. dba  
Organics "By Gosh"

ATTN: Donna Gosh, Contract Manager

PO Box 908

Del Valle, TX 78617

**7.9 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 Contract, 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.

**7.10 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.

**7.11 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.

**7.12 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 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.

**7.13 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.

**7.14 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.

**7.15 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.

**7.16 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.

**7.17 Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

**7.18 Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

**7.19 Dispute Resolution.**

7.19.1 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.

7.19.2 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.

## **7.20 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

7.20.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

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

7.20.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor 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.

## **7.21 Subcontractors.**

7.21.1 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.

7.21.2 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:

7.21.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.21.2.2 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;

7.21.2.3 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;

7.21.2.4 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

7.21.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.21.3 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.

7.21.4 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.

**7.22 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.

**7.23 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.

**7.24 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.

**7.25 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.

**7.26 Incorporation of Documents. Section 0100, Standard Purchase Definitions,** is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:  
[https://assets.austintexas.gov/purchase/downloads/standard\\_purchase\\_definitions.pdf](https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf)

**7.27 Order of Precedence.** The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

7.27.1 any exceptions to the Offer accepted in writing by the City;

7.27.2 the Supplemental Purchase Terms and Conditions;

7.27.3 the Standard Purchase Terms and Conditions;

7.27.4 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

**7.28 Interlocal Purchasing Agreements.**

7.28.1 The City has entered into Interlocal Purchasing Agreements with other governmental agencies 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 agencies that have an interlocal agreement with the City.

7.28.2 The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

**EMPLOYEE OWNED NURSERY ENTERPRISES  
LTD. dba ORGANICS "BY GOSH"**

PGosh  
Signature

Phil Gosh  
Printed Name of Authorized Person

CEO  
Title

September 29, 2017  
Date

**CITY OF AUSTIN**  
Danielle Lord  
Signature

Danielle Lord  
Printed Name of Authorized Person

Procurement Manager  
Title

9/29/17  
Date

## List of Exhibits

Exhibit A	Scope of Work
Exhibit B	Price Proposal
Exhibit C	Non Discrimination Certification, Section 0800

**EXHIBIT A**  
**SCOPE OF WORK**  
**ORGANICS PROCESSING SERVICES PROGRAM**

**1.0 PURPOSE**

The City of Austin ("City") seeks proposals from qualified Contractors that specialize in composting organics and have integrated solid waste management programs that place a high priority on customer service and the diversion of waste from landfill disposal. Contractors should have demonstrated significant innovative results through their composting program development, implementation, and operations. Contractors should also be able to provide complete organics processing, sorting, composting, marketing services and detailed data reporting to support the City's expanding residential curbside organic materials collection program and have a processing facility no more than 30 miles from City Hall.

The City reserves the right to select one or more Contractors based on each Contractor's level of experience, qualifications, diversion methods/rates, organics processing and contamination removal methods utilized, capacity of facility, location, fees, and the overall best interest of the City.

**2.0 BACKGROUND**

In 2012, the City began a curbside residential pilot organics program utilizing City or customer supplied carts or containers. The purpose of this program is to reduce waste and ensure that yard waste, food scraps, food/oil, and soiled compostable paper can be adequately composted for reuse. The program will help the City achieve its Zero Waste Goals to reduce the amount of waste sent to the landfill by 75 percent by 2020 and 90 percent by the year 2040.

The 2015 annual volume of curbside organic materials (yard waste, food scraps, and food/oil soiled compostable paper) collected in the pilot program were approximately 4,300 tons of materials from approximately 14,500 residential customers. A citywide expansion may include over 210,000 residential customers; therefore, Contractor shall support, in its proposal, their ability to properly accept and process the increase in volumes as the program expands to an approximate increase in annual tonnage to 72,000 tons with full citywide participation. [Note: All tonnages are estimates only, and no guarantee of actual volumes delivered.]

The City collects yard waste, food scraps, food/oil, soiled compostable paper, utilizing City or customer supplied carts or containers of various sizes.

**3.0 SPECIFICATIONS/ SCOPE OF WORK**

3.1 Facility - Contractors shall furnish a facility or facilities sufficient to handle the volumes of materials that will be collected as the program expands as described below. All skills, manpower, equipment, supplies, utility services, vehicles, transportation and all resources necessary to successfully accept the volume of materials delivered, screening and sorting, processing, marketing, selling, and reporting of all compostable materials delivered to Contractor by the City of Austin per the specifications herein.

3.1.1 The City seeks a Contractor with a facility, where City vehicles can transport and drop-off all compostable materials no more than 30 miles from City Hall.

3.1.2 Any and all facilities/locations used must be fully licensed, permitted and in compliance with all required Federal, State, County, and City regulations. Proof of all compliance may be required from the City at any time during the contract.

3.2 Compostable Materials - The City reserves the right to increase and/or decrease all organic/compostable commodities and volumes at any time during the contract period, and no guaranteed commodities or volumes are to be construed in any way.

**EXHIBIT A**  
**SCOPE OF WORK**  
**ORGANICS PROCESSING SERVICES PROGRAM**

At a minimum, the following materials are to be considered compostable materials:

- 3.2.1 Animal meats including but not limited to: deli meats, sandwiches, raw and cooked meats, (beef, poultry, pork, deer, bison and other), meat trimmings and renderings and seafood;
- 3.2.2 Vegetable and fruit materials;
- 3.2.3 Animal, vegetable and fruit fats, oils and greases;
- 3.2.4 Soiled paper products including but not limited to: soiled paper/soiled food products, soiled paper cups, soiled paper plates/paper towels, paper, non-foam egg cartons, napkins, plain tissue paper, cardboard cereal and food boxes, empty and/or used pizza boxes, empty and/or used paper food containers, wet cardboard;
- 3.2.5 Yard waste and leaves including but not limited to: grass, lawn and garden clippings, small trees/bushes and branches, pinecones, shrub/bush trimmings, brush, yard/garden paper and cardboard products, flowers, plants, and soil.
- 3.2.6 All unpackaged food waste including but not limited to: all food scraps, nuts and shells, corn cobs, coffee and tea bags/grounds/leaves and filters, eggs and egg shells, breads and bakery products, cheese and dairy products, food scraps, all edible grocery items, bones, and frozen foods;
- 3.2.7 Unpainted, untreated, and unstained wood products, boxes and wood pieces including but not limited to: wooden crates without large bolts, popsicle sticks and small wood objects, wood shavings, and lumber, cedar shingles, and other clean wood;
- 3.2.8 Miscellaneous biodegradable items including but not limited to: pet hair/fur, feathers, sawdust, paper bags, cereal boxes, newspaper, shredded paper, cotton balls/pads, ASTM D6400 Biodegradable Products Institute certified compostable utensils, dog and cat food, bone meal, and ASTM D6400 Biodegradable Products Institute certified compostable food waste bags;
- 3.2.9 Other materials may be added as determined compostable and mutually agreed in writing.

**3.3 Collection and Processing Procedures**

- 3.3.1 Currently the City collects and delivers approximately 2-5 loads daily, from the current residential customers participating in the curbside organics program; however, the number of deliveries and volumes are subject to change, without notice. No volumes/quantities are guaranteed. The Contractor's facilities should be capable of handling larger volumes than currently collected. Contractors should provide detailed information as to the facility's production, storage and processing capacities, and ability to handle increased volumes.
- 3.3.2 The City reserves the right to include additional yard waste (leaves, grass, branches, brush) as an immediate contingency in the event the City's Hornsby Bend processing site is unavailable and/or due to unforeseen and/or changing circumstances. The City estimates around 4,400 tons, representing approximately two (2) months volume of the current yard-trimmings collection program could be diverted to the Contractor's facility. This is **not** to be construed as a guaranteed volume; however, Contractors must be able to forecast and be able to accept these materials should this occur.

**3.4 Safety-** Contractors shall properly train all employees, subcontractors and agents in all regulatory requirements, hazards and dangers in the delivery and processing of the organic materials.

**EXHIBIT A**  
**SCOPE OF WORK**  
**ORGANICS PROCESSING SERVICES PROGRAM**

- 3.4.1 Contractors shall ensure all employees, subcontractors and agents working with, around, and/or processing organic materials shall wear the proper personal protective equipment while on the premises and/or while performing any part of the processing.
  - 3.4.2 Contractors shall implement and provide the City with its safety plan and responses for any and all safety concerns including but not limited to fire, flood, injuries and other.
  - 3.4.3 Contractors shall be solely responsible and liable for any and all injuries and damages that occur on its property and its operations, and shall hold harmless the City and indemnify the City from any and claims asserted as a result thereof extending to all performance under this contract.
- 3.5 Contamination and Reporting
- 3.5.1 In order to determine the composition of the materials, on a semi-annual basis, the City will deliver selected loads, based upon a reasonable sampling of all materials collected by the City, to the Contractor's location, at a predetermined and agreed to date in January and August, in order to perform a composition study and audit of the materials. The City will alternate the routes each six month period, but the City will elect the routes for each composition study period.
  - 3.5.2 Contractor shall perform the audit of the samplings provided by the City, with City personnel present to record the results. The composition study will establish the contamination versus compostable materials delivered.
  - 3.5.3 Contractors shall not reject a load unless the load can be supported to contain at least 25% contamination by weight. Any claim of 25% or greater contamination in a load must be fully documented and the documentation submitted to the City's Contract Manager, within three business days as a Notice of Rejected Load. Upon rejection, the load shall be set aside and segregated from other materials. Contractor shall photograph rejected loads using arrows, markings, and descriptions emphasizing the contaminants. Some form of measurement must be included in the picture to support the rejected load claim [e.g. weight ticket of load as delivered compared to contamination weight]. Contractor shall provide the date, time, truck number, and weight of the vehicle delivering contaminated materials. The City will make a good faith effort to reduce contamination from identified problematic routes. The City reserves the right to inspect and/or audit any such claim asserted. Rejected loads are permitted to be landfilled by the Contractor.
  - 3.5.4 Contractors shall be solely responsible for the disposal of any and all contaminated materials and shall provide information regarding any facility where contaminated waste will be disposed, subject to City approval. All disposal facilities must be properly permitted and in full compliance of all regulatory requirements. In the event that the City mandates a specific disposal facility, the Contractor may request a price change.
  - 3.5.5 Contractors shall have all scales calibrated and certified annually to be in full Texas Department of Agriculture compliance and provide the City with State documentation of verification on an annual basis, without prior request from the City.
  - 3.5.6 Contractors shall maintain and annually provide the City copies of all necessary licenses, permits, and or registrations for the compost/organics operations, without prior notification from the City.

**EXHIBIT A**  
**SCOPE OF WORK**  
**ORGANICS PROCESSING SERVICES PROGRAM**

**3.6     Marketing and Selling Organic Materials**

- 3.6.1     Contractors shall be solely responsible to process, compost, market, sell, recycle, and/or beneficially reuse all compostable materials received from the City's collection services.
- 3.6.2     The City may require documentation supporting that all compostable materials, delivered to Contractor(s), are used in an environmentally positive way, and that no reusable materials are burned or disposed of.

**4.0     SITE REQUIREMENTS**

- 4.1     The City shall drop off material to the Contractor's facility at 13602 FM 969, Austin, TX 78724 (primary site). The Contract rate only applies to material dropped off at this site. Contractors shall not relocate facilities without permission from the City. Contractor(s) shall provide documentation [ownership, lease, rental agreement] supporting it has and can maintain the same suitable site for the duration of the entire contract, including extensions, should any be exercised at the City's sole discretion.
- 4.2     If the primary site is unavailable to receive material, material may be delivered to 2017 FM 969, Elgin, TX 78621(secondary site). Materials delivered to the secondary site will be billed at a reduced rate of \$18.50 per ton to offset additional City costs. If the primary site remains unavailable for more than five consecutive business days, or more than 10 total business days in one month, the rate at the secondary site, for all days in excess of 10, shall be \$13.50 per ton until the primary site is available.
- 4.3     If another site is available or becomes available in the future, the rate will be the established contract rate or lower, if the City's costs are increased by delivering to an additional site.
- 4.4     Contractors shall keep locations open to accept deliveries from the City, Monday through Friday from 7:00 am to 5:00 pm, excluding Thanksgiving Day, Christmas Day and New Year's Day; however, Contractor shall be open for deliveries on the three following Saturdays subsequent to the above listed holidays. The City may require Contractors to remain open longer periods of time in emergency situations or to complete collection routes which are delayed due to unusual circumstances. In those circumstances, the City will notify Contractors by email or telephone to provide additional times and services as needed.
- 4.5     Contractors shall ensure City drivers have easy ingress and egress to access and dump the loads. Facilities shall minimize backup requirements, have a minimum of 12 feet wide driveways/delivery paths, and have no steep grades or sharp turns. In the event a City vehicle is stuck, the Contractor shall have at least one staff member on site while the City is working to move City vehicles.

**5.0     APPLICABLE PERMITS AND LICENSES**

Contractors shall obtain and maintain all permits, licenses, and/or registrations to perform all services described herein. All services provided in relationship to this RFP, directly and indirectly, shall be in compliance with all laws, ordinances, specifications, rules and regulations for this service as established by the City of Austin, State of Texas, State Board of Health, U.S. Environmental Protection Agency, Occupational Safety and Health Administration, Texas Commission on Environmental Quality, and any other federal, state or local governmental provisions. Contractors are presumed to know what the legal requirements are and shall be solely responsible to maintain all said regulatory requirements and are liable for the failure to do so.

**6.0     FEES, REPORTING AND INVOICE REQUIREMENTS**

- 6.1     Fees - As the composting/organics program and customer base expands, volumes are anticipated to increase; therefore, the City seeks a contract that is to be established on a

**EXHIBIT A  
SCOPE OF WORK  
ORGANICS PROCESSING SERVICES PROGRAM**

tiered and equality pricing basis based upon volume per tonnage delivered. The City seeks Contractors that will structure pricing to provide a decrease in processing and other fees as the volumes increase.

6.2 Monthly Reports - Contractor's monthly reports shall include, at a minimum, the following information:

6.2.1 Weight ticket of each load as delivered, pre-sorted to include date, time the ticket was generated, truck number and weight,

6.2.2 Total tons of material received per month breaking out the weight of material that was rejected,

**7.0 COMMUNITY IMPACT**

Contractors shall provide how they will consider public impact on all areas of performance of this program. Contractors shall provide an annual report to the City to define all efforts and results on the community and citizens of the Austin area from this program as well as an annual diversion rate per ton for materials diverted from the landfills resulting from this program.

**8.0 OMISSIONS**

It is the intention of these specifications to acquire complete organics processing and composting services of the type described herein, with all necessary components. All items and/or services omitted from this specification which are clearly necessary for the successful operation of the services described herein shall be considered requirements although not directly specified or called for herein.

**EXHIBIT A  
SCOPE OF WORK  
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**DEFINITIONS**

Composting - The process of converting difficult to handle organic materials resulting in a mixture of decayed organic matter used for fertilizing and agriculture.

Compostables - Materials capable of undergoing biological decomposition in a compost site as part of an available program such that the material is not visually distinguishable and breaks down into carbon dioxide, water, inorganic compounds, and biomass at a rate consistent with known compostable materials.

Contaminants - any materials outside the definition of organic/compostable matter included herein and as determined outside the scope of organic and or biodegradable that are commingled in the processing loads to include glass, plastics, metals, and foam products.

Food Waste - all food scraps, including all animal meats, dairy products, grease and bones; paper which has been contaminated with food, fat or grease; and soiled cardboard and paper including paper towels, paper plates, bags, tissue and waxed paper.

Organic Waste - includes food, yard and wood waste, ASTM D6400 Biodegradable Products Institute certified compostable bags, single-use food service ware, and other organic materials as mutually agreed to by the City and the Contractor.

Wood Waste - any wood or tree limbs over four (4) inches in diameter, unpainted and untreated, lumber, and cedar shingles, and other clean wood delivered to the City facilities.

Yard Waste - plant material (leaves, grass clippings, branches, brush, flowers, roots, wood waste, etc.); debris commonly thrown away in the course of maintaining yards and gardens, including sod and a small number of incidental rocks not over two (2) inches in diameter; and biodegradable waste approved for the yard waste programs of the City.

Zero Waste - a goal that is ethical, economical, efficient and visionary, to guide people in changing their lifestyles and practices to emulate sustainable natural cycles, where all wasted materials are designed to become resources for others to use. Zero Waste means designing and managing products and processes to systematically avoid and eliminate the volume and toxicity of waste and materials, conserve and recover all resources, and not burn or bury them. Implementing Zero Waste will eliminate all discharges to land, water or air that are a threat to planetary, human, animal or plant health. (As defined by the Zero Waste International Alliance.)

zero waste (lower case) - no waste burned or buried.

Zero Waste Strategic Plan - adopted by the Austin City Council on January 15, 2009 and defined as a Diversion Rate of 90% of the total materials generated within the city limits. Therefore, Zero Waste will be reached when Total Diverted Tons divided by (Total Diverted Tons + Total Disposed Tons) equals 90%.

## EXHIBIT B

CITY OF AUSTIN  
PURCHASING OFFICE  
ORGANICS PROCESSING SERVICES PROGRAM

Solicitation No.: RFP SLW0509REBID

A bid of "0" (zero) will be interpreted by the City as a no-charge (free) item and the City will not expect to pay for that item. A bid of "no-bid" will be interpreted by the City that the responder does not wish to bid on that item.

The quantities listed are annual estimates and not a guarantee of actual volume. The City reserves the right to make multiple awards based on individual line items, cost, geographic location, convenience, or any criteria or any combination deemed most advantageous to the City. The Vendor may choose to submit pricing for all items listed on the bid sheet or only specific items on the bid sheet in consideration of this solicitation.

LINE ITEM	DESCRIPTION	UNIT	UNIT PRICE	ESTIMATED QUANTITY PER MONTH (IN TONS)	ANNUAL PRICE
1.1	Organic material sorting, tipping, and/or processing fees for Tier 1 (<350 tons)	PER TON	\$ 29.94	350	\$ 125,748.00
1.2	Organic material sorting, tipping, and/or processing fees for Tier 2 (350 tons - 450 tons)	PER TON	\$ 29.44	450	\$ 158,976.00
1.3	Organic material sorting, tipping, and/or processing fees for Tier 3 (450 tons - 550 tons)	PER TON	\$ 28.94	550	\$ 191,004.00
1.4	Organic material sorting, tipping, and/or processing fees for Tier 4 (>550 tons)	PER TON	\$ 28.44	550	\$ 187,704.00
1.5	Contamination disposal fee (if any)	PER TON		1	\$ -
<b>TOTAL ANNUAL PRICE:</b>					<b>\$ 663,432.00</b>

**EXHIBIT C**  
**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 29th day of September, 2017

CONTRACTOR	<u>Organics "By Gosh"</u>
Authorized	
Signature	<u></u>
Title	<u>CEO</u>



**CITY OF AUSTIN, TEXAS**  
**Purchasing Office**  
**REQUEST FOR PROPOSAL (RFP)**  
**OFFER SHEET**

**SOLICITATION NO:** RFP SLW0509REBID

**DATE ISSUED:** May 30, 2016

**COMMODITY/SERVICE DESCRIPTION:** Organics Processing Services

**REQUISITION NO.:** RQM 1500 16020900256

**COMMODITY CODE:** 98859

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

Sandy Wirtanen  
Senior Buyer

**Phone:** (512) 974-7711  
**E-Mail:** sandy.wirtanen@austintexas.gov

Marian Moore  
Buyer II

**Phone:** (512) 974-2062  
**E-Mail:** marian.moore@austintexas.gov

**PROPOSAL DUE PRIOR TO:** June 23, 2016 at 2:00 PM

**PROPOSAL CLOSING TIME AND DATE:** June 23, 2016 at 2:00 PM

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

**LIVE SOLICITATION CLOSING ONLINE:** For RFP'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/department/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
City of Austin	City of Austin, Municipal Building
Purchasing Office-Response Enclosed for Solicitation # SLW0509REBID	Purchasing Office-Response Enclosed for Solicitation # SLW0509REBID
P.O. Box 1088	124 W 8 <sup>th</sup> Street, Rm 308
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**

**\*\*\*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	7
0500	SCOPE OF WORK	6
0510	EXCEPTIONS CHECKLIST	1
0600	PROPOSAL PREPARATION INSTRUCTIONS & EVALUATION FACTORS	4
0600B	BID SHEET	1
0605	LOCAL BUSINESS PRESENCE IDENTIFICATION FORM – Complete and return	2
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	*
0835	NONRESIDENT BIDDER PROVISIONS – Complete and return	1
0900	MBE/WBE PROCUREMENT PROGRAM PACKAGE NO GOALS FORM – Complete & return	2

**\* 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: Employee Owned Nursery Enterprises, Ltd., dba Organics "By Gosh"

Company Address: P.O. Box 908

City, State, Zip: Del Valle, Texas 78617

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

Printed Name of Officer or Authorized Representative: Phil Gosh

Title: CEO

Signature of Officer or Authorized Representative: 

Date: 6-22-16

Email Address: phil@orgaicsbygosh.com

Phone Number: 512-276-1211 / 512-844-8648

**\* Proposal response must be submitted with this Offer sheet to be considered for award**

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

The following Supplemental Purchasing Provisions apply to this solicitation for Organics Processing:

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 one week prior to the bid opening date by 1:00PM CST. Any requests should be faxed to 512-974-2388 or emailed to [sandy.wirtanen@austintexas.gov](mailto:sandy.wirtanen@austintexas.gov).

2. **ALTERNATE OFFERS:** (reference paragraph 7A in Section 0200)

Alternate Offers will be considered.

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

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

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

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

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

- i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
  - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
    - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
    - (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:
    - (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

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

- (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.
  - C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.
4. **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 **three (3) additional twelve (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.
  - D. Prices are firm and fixed for the first twelve months. Thereafter, price changes are subject to the Economic Price Adjustment provisions of this Contract.
5. **PRE-AWARD:** Prior to awarding a Contract, the City reserves the right to visit the premises of any Offeror being considered for a Contract. The site visit will be made during the evaluation process to determine whether or not the Offeror has the appropriate facilities, equipment, inventory, licenses, registrations, permits, and qualified personnel to perform according to the Scope of Work (Section 0500). Offerors, who in the City's opinion, do not have the resources to perform, will not be considered for Contract award regardless of their proposal price. The Offeror shall furnish, or cause to be furnished, without additional charge, all reasonable assistance to the City to facilitate the site visit.

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

6. **QUANTITIES:** The quantities listed herein are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.

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

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

Invoices shall be mailed to the below address:

To:	The City of Austin
Department:	Austin Resource Recovery Department (ARR)
Attn Dept:	Accounts Payable
Email Address:	ARR.AP@austintexas.gov

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

- C. Invoice and Administration Requirements

- i. Where services are provided on site, upon completion of Services and prior to leaving the site, Contractor shall provide a detailed record of all Services performed, including steps taken to complete Services, including delivery receipts, all authorized parts to be and/or replaced, an inventory of all authorized parts installed and/or to be ordered and details of all labor (hours from start to completion times) to authorized City personnel.
- ii. Submitted invoices shall be sent to the Contract Manager and/or designated City staff, as well as ARR, Accounts Payable, via email. It is preferred that all paperwork shall be in typed/data entry, computer generated format, and include supportive documentation and records to substantiate charges; however, where this is not possible, all invoices must be neatly printed and easily legible.
- iii. Flat-fee rates shall include a breakdown of all related costs, i.e. trip fee and fuel costs; therefore, no additional line item charges shall be authorized beyond the accepted flat-fee "service call" rates as provided in the bid proposal.
- iv. If performance is unacceptable, the Contractor shall be required to correct all problem areas within (3) three business days of notification and payment shall be delayed until work is remedied. Where unsatisfactory performance is not remedied within (3) three business days, the City reserves the right to hire another Contractor to correct unacceptable performance at the expense of the Contractor, unless otherwise agreed to in writing.
- v. Payments to the Contractor shall be withheld until all work at the site is deemed acceptable or good approved by the *Contract Manager*.
- vi. Acceptance of all work performed under the executed contract shall be at the sole discretion of the Austin Resource Recovery Contract Manager and/or designated personnel, and as monitored by the ARR Purchasing division.
- vii. All weight tickets must be computer generated, where possible.

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- viii. **Monthly Invoices** shall be computer-generated and include the following where directed by the Contract Manager:
- (1) Weight ticket of each load as delivered, pre-sorted to include date, truck number and weight,
  - (2) Digital photographs with arrows, dates, and data recording the load as delivered, with “noticeable” contamination if any, per load as delivered,
  - (3) All invoices, statements, reports and documentation must be connected by dates, weight tickets, truck number for that period reported,
  - (4) Invoices are to separate out tiered/equity based pricing per ton and provide reduction based upon tonnage delivered, and any contamination/disposal fee where applicable,
  - (5) Prorated billing for all services that are performed for less than the entire month covered by the invoice. Prorated bills shall note the ending and/or beginning date of the services being charged. The method(s) used by the Contractor to calculate prorated bills is subject to the approval of the City,
  - (6) Monthly report shall include total tons of material received, total tons of material reused or recycled and percentage of diversion.
  - (7) If the contamination weights, per week, total 3% or greater than the total weights of all loads delivered before sorting, Contractor must report the contamination volumes and weights to the Contractor Manager within three (3) business days. Late reporting will not be accepted, and those loads will not qualify for payment of any kind.

8. **HAZARDOUS MATERIALS:**

- A. If this Solicitation involves hazardous materials, the Offeror shall furnish, with the Offer, Material Safety Data Sheets (MSDS), (OSHA Form 20), on all chemicals and hazardous materials specifying the generic and trade name of product, product specification, and full hazard information including receiving and storage hazards. Instructions, special equipment needed for handling, information on approved containers, and instructions for the disposal of the material are also required.
- B. Failure to submit the MSDS as part of the Offer may subject the Offer to disqualification from consideration for award.
- C. The MSDS, instructions and information must be included with each shipment under the contract.
- D. All Texas Commission of Environmental Quality (TCEQ) standards must be followed and will be enforced.

9. **RECYCLED PRODUCTS:**

- A. The City prefers that Offerors offer products that contain recycled materials. When a recycled product is offered by the Offeror, the Offeror must state in their Offer the percentage of the product that is recycled and must include a list of the recycled materials that are contained in the product.
- B. The recycled content of paper products offered to the City shall be in accordance with the Federal Environmental Protection Agency’s Recycled Product Procurement Guidelines. These guidelines are available at <http://www.epa.gov/cpg/> .
- C. Contract award for paper products will be made for recycled products unless the cost is more than 10% above the lowest price for non-recycled paper products as required in the City’s Comprehensive Recycling Resolution.

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**10. 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>

**11. NON-SOLICITATION:**

- A. During the term of the Contract, and for a period of six (6) months following termination of the Contract, the Contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City department that engages or uses the services of a Contractor employee.
- B. In the event that a breach of Paragraph A occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation; or (ii) 100 percent of the employee's annual compensation while employed by the City. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision.
- C. During the term of the Contract, and for a period of six (6) months following termination of the Contract, a department that engages the services of the Contractor or uses the services of a Contractor employee will not hire a Contractor employee while the employee is performing work under a Contract with the City unless the City first obtains the Contractor's approval.
- D. In the event that a breach of Paragraph C occurs, the City shall pay liquidated damages to the Contractor in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation or (ii) 100 percent of the employee's annual compensation while employed by the Contractor.

**12. ECONOMIC PRICE ADJUSTMENT:**

- A. **Price Adjustments:** Prices shown in this Contract shall remain firm for the first 12 months of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed

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twenty-five percent (25%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.

- B. **Effective Date:** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.
- C. **Adjustments:** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.
- D. **Indexes:** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.
- i. The following definitions apply:
- (1) **Base Period:** Month and year of the original contracted price (the solicitation close date).
  - (2) **Base Price:** Initial price quoted, proposed and/or contracted per unit of measure.
  - (3) **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
  - (4) **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.
  - (5) **Weight %:** The percent of the Base Price subject to adjustment based on an index change.
- ii. **Adjustment-Request Review:** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
- (1) Utilize final Compilation data instead of Preliminary data
  - (2) If the referenced index is no longer available shift up to the next higher category index.

iii. **Index Identification:**

Weight % or \$ of Base Price: 100%	
Database Name: CPI – All Urban Customers	
Series ID: CUUR0300SA0	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: South Urban	
Description of Series ID: All Items	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: All	

- E. **Calculation:** Price adjustment will be calculated as follows:

Index at time of calculation
Divided by index on solicitation close date
Equals Change Factor
Multiplied by the Base Rate
Equals the Adjusted Price

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13. **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.
14. **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:

Jo Gutierrez, [Jocabed.Gutierrez@austintexas.gov](mailto:Jocabed.Gutierrez@austintexas.gov) , 512-974-6084

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\*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**  
**ORGANICS PROCESSING SERVICES PROGRAM**  
**SOLICITATION NUMBER: RFP 1500 SLW0509REBID**

**1.0 PURPOSE**

The City of Austin ("City") seeks proposals from qualified Contractors that specialize in composting organics and have integrated solid waste management programs that place a high priority on customer service and the diversion of waste from landfill disposal. Contractors should have demonstrated significant innovative results through their composting program development, implementation, and operations. Contractors should also be able to provide complete organics processing, sorting, composting, marketing services and detailed data reporting to support the City's expanding residential curbside organic materials collection program and have a processing facility no more than 30 miles from City Hall.

The City reserves the right to select one or more Contractors based on each Contractor's level of experience, qualifications, diversion methods/rates, organics processing and contamination removal methods utilized, capacity of facility, location, fees, and the overall best interest of the City.

**2.0 BACKGROUND**

In 2012, the City began a curbside residential pilot organics program utilizing City or customer supplied carts or containers. The purpose of this program is to reduce waste and ensure that yard waste, food scraps, food/oil, and soiled compostable paper can be adequately composted for reuse. The program will help the City achieve its Zero Waste Goals to reduce the amount of waste sent to the landfill by 75 percent by 2020 and 90 percent by the year 2040.

The 2015 annual volume of curbside organic materials (yard waste, food scraps, and food/oil soiled compostable paper) collected in the pilot program were approximately 4,300 tons of materials from approximately 14,500 residential customers. A citywide expansion may include over 210,000 residential customers; therefore, Contractor shall support, in its proposal, their ability to properly accept and process the increase in volumes as the program expands to an approximate increase in annual tonnage to 72,000 tons with full citywide participation. [Note: All tonnages are estimates only, and no guarantee of actual volumes delivered.]

The City collects yard waste, food scraps, food/oil, soiled compostable paper, utilizing City or customer supplied carts or containers.

**3.0 SPECIFICATIONS/SCOPE OF WORK**

3.1 Facility - Contractors shall furnish a facility or facilities sufficient to handle the volumes of materials that will be collected as the program expands as described below. All skills, manpower, equipment, supplies, utility services, vehicles, transportation and all resources necessary to successfully accept the volume of materials delivered, screening and sorting, processing, marketing, selling, and reporting of all compostable materials delivered to Contractor by the City of Austin per the specifications herein.

3.1.1 The City seeks a Contractor with a facility, where City vehicles can transport and drop-off all compostable materials no more than 30 miles from City Hall.

3.1.2 Any and all facilities/locations used must be fully licensed, permitted and in compliance with all required Federal, State, County, and City regulations. Proof of all compliance may be required from the City at any time during the contract.

3.2 Compostable Materials - The City reserves the right to increase and/or decrease all organic/compostable commodities and volumes at any time during the contract period, and no guaranteed commodities or volumes are to be construed in any way.

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At a minimum, the following materials are to be considered compostable materials:

- 3.2.1 Animal meats including but not limited to: deli meats, sandwiches, raw and cooked meats, (beef, poultry, pork, deer, bison and other), meat trimmings and renderings and seafood;
- 3.2.2 Vegetable and fruit materials;
- 3.2.3 Animal, vegetable and fruit fats, oils and greases;
- 3.2.4 Soiled paper products including but not limited to: soiled paper/soiled food products, soiled paper cups, soiled paper plates/paper towels, paper, non-foam egg cartons, napkins, tissue papers, cardboard cereal and food boxes, empty and/or used pizza boxes, empty and/or used paper food containers, wet and waxed cardboard, and waxed paper;
- 3.2.5 Yard waste and leaves including but not limited to: grass, lawn and garden clippings, small trees/bushes and branches, pinecones, shrub/bush trimmings, brush, yard/garden paper and cardboard products, flowers, plants, and soil.
- 3.2.6 All food waste including but not limited to: all food scraps, nuts and shells, corn cobs, coffee and tea bags/grounds/leaves and filters, eggs and egg shells, breads and bakery products, cheese and dairy products, food scraps, all edible grocery items, bones, and frozen foods;
- 3.2.7 Wood products, boxes and wood pieces including but not be limited to: wooden crates, popsicle sticks and small wood objects, wood ashes, wood shavings, unpainted and untreated pallets, lumber, laths, cedar shingles, and other clean wood;
- 3.2.8 Miscellaneous biodegradable items including but not limited to: pet hair/fur, feathers, sawdust, paper bags, dryer lint, cereal boxes, newspaper, shredded paper, cotton balls/pads, compostable utensils, dog and cat food, bone meal, and Biodegradable Products Institute certified compostable food waste bags;
- 3.2.9 Other materials may be added as determined compostable and mutually agreed.

**3.3 Collection and Processing Procedures**

- 3.3.1 Currently the City collects and delivers approximately 2-5 loads daily, from the current residential customers participating in the curbside organics program; however, the number of deliveries and volumes are subject to change, without notice. No volumes/quantities are guaranteed. The Contractor's facilities should be capable of handling larger volumes than currently collected. Contractors should provide detailed information as to the facility's production, storage and processing capacities, and ability to handle increased volumes.
- 3.3.2 The City reserves the right to include additional yard waste (leaves, grass, branches, brush) as an immediate contingency in the event the City's Hornsby Bend processing site is unavailable and/or due to unforeseen and/or changing circumstances. The City estimates around 4,400 tons, representing approximately two (2) months volume of the current yard-trimmings collection program could be diverted to the Contractor's facility. This is **not** to be construed as a guaranteed volume; however, Contractors must be able to forecast and be able to accept these materials should this occur.

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- 3.4 Safety- Contractors shall properly train all employees, subcontractors and agents in all regulatory requirements, hazards and dangers in the delivery and processing of the organic materials.
- 3.4.1 Contractors shall ensure all employees, subcontractors and agents working with, around, and/or processing organic materials shall wear the proper personal protective equipment while on the premises and/or while performing any part of the processing.
- 3.4.2 Contractors shall implement and provide the City with its safety plan and responses for any and all safety concerns including but not limited to fire, flood, injuries and other.
- 3.4.3 Contractors shall be solely responsible and liable for any and all injuries and damages that occur on its property and its operations, and shall hold harmless the City and indemnify the City from any and claims asserted as a result thereof extending to all performance under this contract.
- 3.5 Contamination and Reporting
- 3.5.1 In order to determine the volume of contamination, on a semi-annual basis, the City will deliver selected loads, based upon a reasonable sampling of all materials collected by the City, to the Contractor's location, at a predetermined and agreed to date, in order to perform a composition study and audit of the materials. The City will alternate the routes each six month period, but the City will elect the routes for each composition study period.
- 3.5.2 Contractor shall perform the audit of the samplings provided by the City, with City personnel present to record the results. The composition study will establish the contamination versus compostable materials delivered. This study will set the contamination rate for the subsequent six month period that the Contractor will use for all materials delivered.
- 3.5.3 Therefore, all materials delivered will be weighed upon delivery and the only contamination rate that can be used will be from the current relevant audit/study, regardless of actual contamination.
- 3.5.4 At the execution of the agreement, the City will schedule the first samplings to be delivered to the Contractor and used for the first six month period of the contract, within two weeks of the onset of the agreement.
- 3.5.5 Contractors shall not reject a load unless the load can be supported to contain at least 25% contamination by weight. Any claim of 25% or greater contamination in a load must be fully documented and the documentation submitted to the City's Contract Manager, within 24 hours as a Notice of Rejected Load. Upon rejection, the load shall be set aside and segregated from other materials. Contractors shall photograph rejected loads using arrows, markings, and descriptions emphasizing the contaminants. Some form of measurement must be included in the picture to support the rejected load claim [e.g. weight ticket of load as delivered compared to contamination weight]. The City reserves the right to inspect and/or audit any such claim asserted. Failure to provide supported documentation for the rejected load, will disqualify the load from any related contamination fees.
- 3.5.6 Contractors should fully address all methods used to report and screen out contamination, subject to City approval.
- 3.5.7 Contractors shall be solely responsible for the disposal of any and all contaminated materials and shall provide information regarding any facility where contaminated

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waste will be disposed, subject to City approval. All disposal facilities must be properly permitted and in full compliance of all regulatory requirements.

3.5.8 Contractors shall have all scales calibrated and certified annually to be in full Texas Department of Agriculture compliance and provide the City with State documentation of verification on an annual basis, without prior request from the City.

3.5.9 Contractors shall maintain and annually provide the City copies of all necessary licenses, permits, and or registrations for the compost/organics operations, without prior notification from the City.

3.6 Marketing and Selling Organic Materials

3.6.1 Contractors shall be solely responsible to process, compost, market, sell, recycle, and/or beneficially reuse all compostable materials received from the City's collection services.

3.6.2 The City may require documentation supporting that all compostable materials, delivered to Contractor(s), are used in an environmentally positive way, and that no reusable materials are burned or disposed of.

**4.0 SITE REQUIREMENTS**

4.1 Contractors shall not relocate facilities without permission from the City. Contractor(s) shall provide documentation [ownership, lease, rental agreement] supporting it has and can maintain the same suitable site for the duration of the entire contract, including extensions, should any be exercised at the City's sole discretion.

4.2 Contractors shall keep locations open to accept deliveries from the City, Monday through Friday from 7:00 am to 5:00 pm, excluding Thanksgiving Day, Christmas Day and New Year's Day; however, Contractor shall be open for deliveries on the three following Saturdays subsequent to the above listed holidays. The City may require Contractors to remain open longer periods of time in emergency situations or to complete collection routes which are delayed due to unusual circumstances. In those circumstances, the City will notify Contractors by email or telephone to provide additional times and services as needed.

4.3 Contractors shall ensure City drivers have easy ingress and egress to access and dump the loads. Facilities shall include no backup requirements, have a minimum of 12 feet wide driveways/delivery paths, and have no steep grades or sharp turns.

**5.0 APPLICABLE PERMITS AND LICENSES**

Contractors shall obtain and maintain all permits, licenses, and/or registrations to perform all services described herein. All services provided in relationship to this RFP, directly and indirectly, shall be in compliance with all laws, ordinances, specifications, rules and regulations for this service as established by the City of Austin, State of Texas, State Board of Health, U.S. Environmental Protection Agency, Occupational Safety and Health Administration, Texas Commission on Environmental Quality, and any other federal, state or local governmental provisions. Contractors are presumed to know what the legal requirements are and shall be solely responsible to maintain all said regulatory requirements and are liable for the failure to do so.

**6.0 FEES, REPORTING AND INVOICE REQUIREMENTS**

6.1 Fees - As the composting/organics program and customer base expands, volumes are anticipated to increase; therefore, the City seeks a contract that is to be established on a tiered and equality pricing basis based upon volume per tonnage delivered. The City

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seeks Contractors that will structure pricing to provide a decrease in processing and other fees as the volumes increase.

**6.2**     Monthly Reports - Contractor's monthly invoices and reports shall include, at a minimum, the following information:

- 6.2.1     Weight ticket of each load as delivered, pre-sorted to include date, truck number and weight,
- 6.2.2     Total tons of material received per month,
- 6.2.3     Agreed contamination rate, per the current study/audit,
- 6.2.4     Tiered/equity based pricing per ton and volume reduction pricing based upon tonnage delivered,
- 6.2.5     Diversion percentages based upon all compostable materials,
- 6.2.6     Digital photographs with arrows, dates, and data recording the load as delivered, with noticeable contamination if any, per load as delivered,
- 6.2.7     Prorated billing for all services that are performed for less than the entire month covered by the invoice. Prorated bills shall note the ending and/or beginning date of the services being charged. The method(s) used by the Contractor to calculate prorated bills shall be subject to the approval of the City.

**7.0     TERM OF CONTRACT**

The contract terms shall be for three (3) years, with three (3) one (1) year extensions to be exercised solely at the City's election and available funding. The contract is dependent upon continued funding and support by Council.

**8.0     COMMUNITY IMPACT**

Contractors shall provide how they will consider public impact on all areas of performance of this program. Contractors shall provide an annual report to the City to define all efforts and results on the community and citizens of the Austin area from this program as well as an annual diversion rate per ton for materials diverted from the landfills resulting from this program.

**9.0     OMISSIONS**

It is the intention of these specifications to acquire complete organics processing and composting services of the type described herein, with all necessary components. All items and/or services omitted from this specification which are clearly necessary for the successful operation of the services described herein shall be considered requirements although not directly specified or called for herein.

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**DEFINITIONS**

Composting - The process of converting difficult to handle organic materials resulting in a mixture of decayed organic matter used for fertilizing and agriculture.

Compostables - Materials capable of undergoing biological decomposition in a compost site as part of an available program such that the material is not visually distinguishable and breaks down into carbon dioxide, water, inorganic compounds, and biomass at a rate consistent with known compostable materials.

Contaminants - any materials outside the definition of organic/compostable matter included herein and as determined outside the scope of organic and or biodegradable that are commingled in the processing loads to include glass, plastics, metals, and foam products.

Food Waste - all food scraps, including all animal meats, dairy products, grease and bones; paper which has been contaminated with food, fat or grease; and soiled cardboard and paper including paper towels, paper plates, bags, tissue and waxed paper.

Organic Waste - includes food, yard and wood waste, City-approved compostable bags, single-use food service ware, and other organic materials as mutually agreed to by the City and the Contractor.

Wood Waste - any wood or tree limbs over four (4) inches in diameter, unpainted and untreated pallets, lumber, lath and cedar shingles, and other clean wood delivered to the City facilities.

Yard Waste - plant material (leaves, grass clippings, branches, brush, flowers, roots, wood waste, etc.); debris commonly thrown away in the course of maintaining yards and gardens, including sod and a small number of incidental rocks not over two (2) inches in diameter; and biodegradable waste approved for the yard waste programs of the City. May include some human or animal excrement; noxious weeds and soil contaminated with hazardous substances.

Zero Waste - a goal that is ethical, economical, efficient and visionary, to guide people in changing their lifestyles and practices to emulate sustainable natural cycles, where all wasted materials are designed to become resources for others to use. Zero Waste means designing and managing products and processes to systematically avoid and eliminate the volume and toxicity of waste and materials, conserve and recover all resources, and not burn or bury them. Implementing Zero Waste will eliminate all discharges to land, water or air that are a threat to planetary, human, animal or plant health. (As defined by the Zero Waste International Alliance.)

zero waste (lower case) - no waste burned or buried.

Zero Waste Strategic Plan - adopted by the Austin City Council on January 15, 2009 and defined as a Diversion Rate of 90% of the total materials generated within the city limits. Therefore, Zero Waste will be reached when Total Diverted Tons divided by (Total Diverted Tons + Total Disposed Tons) equals 90%.

**CITY OF AUSTIN  
PURCHASING OFFICE  
PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS  
SOLICITATION NUMBER: RFP SLW0509REBID**

**1. PROPOSAL FORMAT**

Prefacing the proposal, the Proposer shall provide an Executive Summary of three (3) pages or less, which gives in brief, concise terms, a summation of the proposal. The proposal itself shall be organized in the following format and informational sequence:

A. **Tab 1 – Executive Summary:** Provide an Executive Summary of three pages or less which gives in brief terms a summation of the Proposal.

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

Complete and submit the following documents:

- i. Offer Sheet
- ii. Section 0510 – Exception Checklist
- iii. Section 0605 – Local Business Presence Identification
- iv. Section 0700 – Reference Sheet
- v. Section 0835 – Non-Resident Bidder Provisions
- vi. 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/WBE firms available to perform the service and include the completed 0900 No Goals Utilization Plan with your proposal packet. Include 0900 No Goals Utilization Plan in Tab 2.**

C. **Tab 3 – Authorized Negotiator:** Include the name, address, and telephone number of the person in your organization authorized to negotiate Contract terms and render binding business decisions on Contract matters.

D. **Tab 4 – Business Organization:** State full name and address of your organization and identify parent company if you are a subsidiary. Specify the branch office or other subordinate element which will perform, or assist in performing, work herein. Indicate whether you operate as a partnership, corporation, or individual. Include the State in which incorporated or licensed to operate. Also, specifically indicate:

- Names and addresses of all processing facilities, including whether they are leased or owned
- Names of facility owners and operators
- Number of employees, full-time and part-time
- Operational hours and observed holidays
- Type and number of transportation vehicles at each facility

E. **Tab 5 – System Concept and Solution:** Define in detail your understanding of the requirements presented in the Scope of Work of this request for proposal and your system solution. Provide all details as required in the Scope of Work and any additional information you deem necessary to evaluate your proposal. Include any recommendations to modify the requirements or an alternate approach (all modifications or alternate approaches must include rationale for recommended changes). Also include any pertinent information the City omitted from the Scope of Work and your recommendations. Specifically include:

- All methods, equipment, and operational strategies on how all organics material delivered by the City will be received, sorted, screened, processed, stored, composted, and marketed.
- A detailed narrative that addresses your organics processing stream for food scraps (including meat, dairy, vegetables, bones, etc.), food/oil soiled compostable paper, and yard waste (leaves, grass clippings, small brush/limbs, etc.). Demonstrate the ability to process and market all organics received at your facilities. Indicate how the organic materials will be marketed. Include a description of the method used for testing and accepting new compostable products.

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- A detailed description of the process of how each load of organic materials is weighed and reported. This should include information confirming the ability to accurately weigh each load as delivered and provide accurate methods to remove contamination. Support for how scales are properly maintained, calibrated, and certified within TDA compliance should be detailed.
  - A description of the methods and procedures used to compost and test the quality and integrity of the composting materials.
  - The methodology/guidelines for determining, separating, and quantifying contamination: how the contaminated material will be determined, handled, documented, and accurately measured as a percentage of total weight. This should include the methods used to retain the majority of compostable materials and prevent mixing with refuse/landfill materials.
  - Business agreements for the disposal of contamination materials.
  - All methods and procedures used to prevent commingling of deliveries between customers and other sources to ensure accurate delivery weights, reported contamination, and sorting/tipping fees.
  - The capacity information pertaining to all facilities, the types of materials accepted for composting, the types of materials NOT accepted for composting, copies of facilities permits, any copies of TCEQ (or other governmental agency) inspection reports since January 1, 2009.
  - Information on how the Contractor will address and support the City's Zero Waste Plan.
- F. **Tab 6 – Contingency Plan:** Submit a written contingency plan to provide for continuity of operations should a processing facility be adversely impacted by a disaster or other event. Please include any alternate facilities that may be used.
- G. **Tab 7 – Project Management Structure:** Provide a general explanation and chart which specifies project leadership and reporting responsibilities; and interface the team with City project management and team personnel. If use of subcontractors is proposed, identify their placement in the primary management structure, and provide internal management description for each subcontractor.
- H. **Tab 8 – Applicable Experience:** Describe only relevant corporate experience and individual experience for personnel who will be actively engaged in the project. Include at least five current client references. Do not include corporate experience unless personnel assigned to this project actively participated. Do not include experience prior to 1998. Supply the project title, year, and reference name, title, present address, and phone number of principal person for whom prior projects were accomplished. Include:
- A minimum of three years providing organic material processing services with annual average residual rates for all organics processed at identified processing facilities from each of the past three years .
  - TCEQ permit (e.g. Compost Facility Permit or Registration or Notice of Intent to Operate a Compost Facility) as applicable for the facility location and the materials processed pursuant to Title 30 Texas Administrative Code. Submit a copy of this permit with proposal.
  - The number of years providing organic materials processing services
  - Experience, if any, developing educational materials and programs
  - The greatest annual organic materials throughput processed (tonnage) achieved in one continuous year

**CITY OF AUSTIN  
PURCHASING OFFICE  
PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS  
SOLICITATION NUMBER: RFP SLW0509REBID**

- I. **Tab 9 – Personnel:** Include names and qualifications of all professional personnel who will be assigned to this project. State the primary work assigned to each person and the percentage of time each person will devote to this work. Identify key persons by name and title. Provide all resumes.
  - J. **Tab 10 – Cost Proposal:** Information described in the following subsections is required from each Proposer. Your method of costing may or may not be used but should be described. Please complete and include Section 0600B Cost Sheet.
  - L. **Tab 11 – Proposal Acceptance Period:** All proposals are valid for a period of one hundred and eighty (180) calendar days subsequent to the RFP closing date unless a longer acceptance period is offered in the proposal.
2. **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 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.
  - D. The City requires Offerors submitting Offers on this Solicitation to provide a signed Section 0810, Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit certifying that the Offeror has not 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=1611453>.
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 Proposer does not desire proprietary information in the proposal 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. **EXCEPTIONS:** List any exceptions that your company is making to the solicitation in Section 0510. Be advised that exceptions to any portion of the Solicitation may jeopardize acceptance of the Proposal.
5. **DEBRIEFINGS:** Any Offeror to this solicitation may request a debriefing up until 30 calendar days after the contract has been fully executed. Accepting debriefing requests after 30 days of contract execution will be at the sole discretion of the City. Debriefings will be scheduled at the availability of the authorized point of contact and will focus specifically on the offer submitted by the Offeror.
6. **PROPOSAL PREPARATION COSTS:**
- All costs directly or indirectly related to preparation of a response to the RFP or any oral presentation required to supplement and/or clarify a proposal which may be required by the City shall be the sole responsibility of the Proposer.

**CITY OF AUSTIN  
PURCHASING OFFICE  
PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS  
SOLICITATION NUMBER: RFP SLW0509REBID**

**7. EVALUATION FACTORS AND AWARD**

A. **Competitive Selection:** This procurement will comply with applicable City Policy. The successful Proposer will be selected by the City on a rational basis. Evaluation factors outlined in Paragraph B below shall be applied to all eligible, responsive Proposers in comparing proposals and selecting the Best Offeror. Award of a Contract may be made without discussion with Proposers after proposals are received. Proposals should, therefore, be submitted on the most favorable terms.

B. **Evaluation Factors:**

i. 100 points.

(1) Location of Drop-Off/ Processing Facility 20 points

20 points where Offeror's facility is located within 0-10 miles of City Hall  
10 points where Offeror's facility is located within 11-20 miles of City Hall  
5 points where Offeror's facility is located within 21-30 miles of City Hall

(2) System Concept and Solution 15  
points

(3) Applicable Experience 10 points

(4) Contingency Plan 5  
points

(5) Total Evaluated Cost 40 points

(6) LOCAL BUSINESS PRESENCE (Maximum 10 points)

Team's Local Business Presence	Points Awarded
Local business presence of 90% to 100%	10
Local business presence of 75% to 89%	8
Local business presence of 50% to 74%	6
Local business presence of 25% to 49%	4
Local presence of between 1 and 24%	2
No local presence	0

ii. Interviews, Optional. The City will score proposals on the basis of the criteria listed above. The City may select a "short list" of Proposers based on those scores. "Short-listed" Proposers may be invited for interviews with the City. The City reserves the right to re-score "short-listed" proposals as a result of the interviews and to make an award recommendation on that basis.

**Section 0605: Local Business Presence Identification**

A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years, currently employs residents of the City of Austin, Texas, and will use employees that reside in the City of Austin, Texas, to support this Contract. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

**OFFEROR MUST SUBMIT THE FOLLOWING INFORMATION FOR EACH LOCAL BUSINESS (INCLUDING THE OFFEROR, IF APPLICABLE) TO BE CONSIDERED FOR LOCAL PRESENCE.**

*NOTE: ALL FIRMS MUST BE IDENTIFIED ON THE MBE/WBE COMPLIANCE PLAN OR NO GOALS UTILIZATION PLAN (REFERENCE SECTION 0900).*

**\*USE ADDITIONAL PAGES AS NECESSARY\***

**OFFEROR:**

Name of Local Firm	Employee Owned Nursery Enterprises, Ltd., dba Organics "By Gosh"	
Physical Address	13602 FM 969 Austin, Texas 78724	
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	<input checked="" type="checkbox"/> No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years?	Yes	<input checked="" type="checkbox"/> No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	<input checked="" type="checkbox"/> Yes	No

**SUBCONTRACTOR(S):** N/A

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No

Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

**SUBCONTRACTOR(S):**

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

**Section 0700: Reference Sheet**Responding Company Name Employee Owned Nursery Enterprises, Ltd., dba Organics "By Gosh"

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 Republic Services of Austin  
Name and Title of Contact Matt Myers  
Project Name \_\_\_\_\_  
Present Address P.O. Box 820  
City, State, Zip Code Del Valle, Texas 78617  
Telephone Number ( 512 ) 645-6348 Fax Number ( \_\_\_\_\_ )  
Email Address mmyers@republicservices.com
  
2. Company's Name Waste Management  
Name and Title of Contact Jeremy Crooke  
Project Name \_\_\_\_\_  
Present Address 9708 Giles Lane  
City, State, Zip Code Austin, Texas 78754  
Telephone Number ( 512 ) 272-6232 Fax Number ( \_\_\_\_\_ )  
Email Address jcrooke@wm.com
  
3. Company's Name Central Waste & Recycling  
Name and Title of Contact Michael Mnoian  
Project Name \_\_\_\_\_  
Present Address 2301 W. Whitestone Blvd. Ste. C2  
City, State, Zip Code Cedar Park, Texas 78613  
Telephone Number ( 512 ) 267-9290 Fax Number ( \_\_\_\_\_ )  
Email Address sales@centralwasteinc.com

**Section 0835: Non-Resident Bidder Provisions**

Company Name Employee Owned Nursery Enterprises, Ltd., dba Organics "By Gosh"

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

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

Answer: Resident Bidder

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

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

Answer: N/A Which State: N/A

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

Answer: N/A

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

SOLICITATION NUMBER: SLW0509REBID  
PROJECT NAME: Organics Processing

**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   X   If no, please sign the No Goals Form and submit it with your Bid/Proposal in a sealed envelope  
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.  
Yes           

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.

Employee Owned Nursery Enterprises, Ltd., dba Organics "By Gosh"

Company Name

Phil Gosh, CEO

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: SLW0509REBID  
PROJECT NAME: Organics Processing

**PRIME CONTRACTOR / CONSULTANT COMPANY INFORMATION**

Name of Contractor/Consultant	Employee Owned Nursery Enterprises, Ltd., dba Organics "By Gosh"		
Address	P.O. Box 908		
City, State Zip	Del Valle, Texas 78617		
Phone Number	512-276-1211	Fax Number	512-276-9165
Name of Contact Person	Phil Gosh		
Is Company City certified?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture <input type="checkbox"/>		

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

Phil Gosh, CEO

Name and Title of Authorized Representative (Print or Type)

Signature

Date

6/22/16

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 \_\_\_\_\_



**ADDENDUM  
ORGANICS PROCESSING SERVICES  
CITY OF AUSTIN, TEXAS**

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**Solicitation: RFP SLW0509REBID      Addendum No: 1      Date of Addendum: 6/23/2016**

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This addendum is to incorporate the following changes to the above referenced solicitation:

- I. Changes to the solicitation due dates as follows:
  - I.1 The proposal due date is hereby extended until 2:00PM Tuesday, June 28, 2016
- II. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

APPROVED BY:

  
Sandy Wipananen, Senior Buyer  
Purchasing Office, 512-974-7711

Date: 6/23/16

ACKNOWLEDGED BY:

Phil Gosh  
Name

  
Authorized Signature

6-24-16  
Date

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**RETURN ONE COPY OF THIS ADDENDUM TO THE PURCHASING OFFICE, CITY OF AUSTIN, WITH YOUR RESPONSE OR PRIOR TO THE SOLICITATION CLOSING DATE. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION.**

Bryan W. Shaw, Ph.D., P.E., *Chairman*  
Toby Baker, *Commissioner*  
Jon Niermann, *Commissioner*  
Richard A. Hyde, P.E., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

October 14, 2015

Phillip Gosh, President  
Organics By Gosh  
13602 FM 969  
Austin, TX 78724-6396

Re: Investigation Type – Compliance Investigation at:  
Organics By Gosh, 13602 FM 969, Austin (Travis County), Texas  
RN105384176, TCEQ Additional ID: 100398, Investigation No. 1276137

Dear Mr. Gosh:

On August 18, 2015, Casey Grunnet and Yessenia Jaramillo of the Texas Commission on Environmental Quality (TCEQ) Austin Regional Office conducted an investigation of the above-referenced facility to evaluate compliance with applicable requirements for municipal solid waste recycling and composting. No violations are being alleged as a result of the investigation, however, please see the enclosed **Additional Issue**.

The TCEQ appreciates your assistance in this matter and your **compliance efforts** to ensure protection of the State's environment. If you or members of your staff have any questions regarding these matters, please feel free to contact Mr. Grunnet in the Austin Regional Office at (512) 339-2929.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Mann".

David Mann  
Waste Section Manager  
Austin Regional Office

DM/CG

## Summary of Investigation Findings

ORGANICS BY GOSH

13602 FM 969

AUSTIN, TRAVIS COUNTY, TX 78724

Investigation #

1276137

Investigation Date: 08/18/2015

Additional ID(s): 100398

TXR05BR90

No Violations Associated to this Investigation

### ADDITIONAL ISSUES

#### Description

Is the 50 ft. set-back distance maintained?

#### Additional Comments

The setback distance from all property boundaries to the edge of the area receiving, processing, or storing feedstock or finished product must be at least 50 feet. The investigators observed two locations at the facility where piles of processed material did not meet the required setback distance. It was noted that right-of-way agreements with neighboring properties do not qualify to meet this distance.



**Organics "By Gosh"**

## CARBONS / BROWNS

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### ACCEPTABLE

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Brush\*  
Grass Clippings  
Paper Products  
Sawdust  
Leaves  
Untreated/Unpainted Wood  
Untreated/Unpainted Pallets  
Clean Cardboard

\* no longer than eight (8) feet long

\* no more than thirty (30) inches in diameter

### PROHIBITED

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Pressboard  
Indoor Plywood  
Hazardous Waste  
Hard or Soft Plastic  
Glass  
Tin  
Painted/Treated Wood  
Nails/Bolts  
Concrete  
Cement  
Rebar  
Iron  
Metal  
Railroad Ties  
Styrofoam  
Insulation  
Fiberglass  
Shingles  
Roofing Paper  
Asphalt  
Household Waste  
Non Compostable Materials  
Stumps  
Rootballs  
Rubber

## NITROGENS / GREENS

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### ACCEPTABLE

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Fruits  
Vegetables  
Spoiled Food  
Breads/Bakery Products  
Coffee Grounds/Filters  
Meat/Poultry/Seafood/Bones  
Dairy Products  
Compostable Bags/Utensils

### PROHIBITED

---

Plastic Straws  
Bottles  
Styrofoam Cups  
Condiment Cups  
Condiment Packages  
Plastic Cups  
Soda Cans  
Waxed Cardboard  
Waxed/Plastic Lined Cups  
Waxed/Plastic Lined Milk Cartons

# 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.

Employee Owned Nursery Enterprises Ltd  
Austin, TX United States

Certificate Number:  
2017-238296

Date Filed:

07/18/2017

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

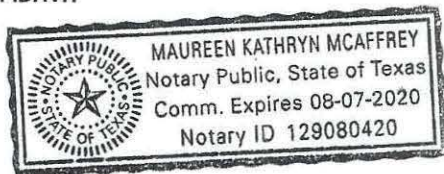
3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

MA 1500 NA170000183  
organics processing


4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Donna, Shaver	Austin, TX United States	X	
	Phil, Gosh	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 of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Donna Shaver, this the 18th day of July, 20 17, to certify which, witness my hand and seal of office.

  
Signature of officer administering oath

MAUREEN MCAFFREY  
Printed name of officer administering oath

NOTARY  
Title of officer administering oath

# Texas Commission on Environmental Quality



## Notice of Intent to Operate a Compost Facility MSW Notification No. 47056

**Notification.** GOSH REALTY ENTERPRISES LTD, P.O. Box 908, Del Valle, Travis County, Texas has submitted a notification; Jehovah Jireh MSW Notification No. 47056, to the Texas Commission on Environmental Quality (TCEQ). The notification regards a municipal compost facility for composting meat, dead animal carcasses, fish, oils and greases, dairy, and vegetative material. The proposed compost facility will be using a required aerobic composting and pathogen reduction method to produce compost. The facility will be located approximately 12.5 miles east of the intersection of FM 969 and TX-130/TX45 off FM 969. The proposed site covers a 26.367 acre tract and is estimated to receive approximately 23,300 cubic yards of feedstock annually. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://www.google.com/maps/place/2017+FM+969,+Elgin,+TX+78621/@30.2173983,-97.4525271,16.75z/data=!4m5!3m4!1s0x8644bde3bbe8cd63:0x138a692785912c47!8m2!3d30.2174562!4d-97.4498796>. For exact location, refer to application.

The notification, submitted on October 6, 2016, and as revised November 28, 2016, has been determined to be in general compliance with the applicable provisions of Title 30 Texas Administrative Code Chapter 332 Subchapter B - Operations Requiring a Notification by the staff of the TCEQ.

**Information.** Individual members of the public who wish to inquire about the information contained in the notice, or to inquire about other agency permit applications or permitting processes, should call the TCEQ Public Participation and Education Program at 1-800-687-4040. General information regarding the TCEQ can be found on our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

Issued: February 23, 2017