



6300 Bridgepoint Pkwy Suite 1-200

Austin, Texas 78730

Corporate Office (512) 278-8800

Fax (512) 278-9355

www.fstichem.com

February 17th, 2021

RE: Force Majeure Declaration

To whom it may concern:

FSTI, Inc., Texas Chlor-Alkali, Chem Eleven Products, and S. Logistics, collectively referred to as (FSTI) is experiencing an unplanned disruption and shutdown at its Greenville Texas facility (Greenville) that is beyond its reasonable control due to the winter storm affecting the State of Texas and adjacent states.

As a result, FSTI is declaring force majeure on the supply and delivery of all grades and strengths of chlor-alkali products and sodium hypochlorite (bleach).

At this time, it is unclear when FSTI will resume operations at the Greenville facility, however in the coming days as temperatures improve the extent of the damage can be properly assessed and the duration of this force majeure will become evident.

FSTI will be contacting you to discuss this force majeure declaration and questions you may have regarding this announcement and subsequent product availability.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Trussell'.

Scott Trussell
Chief Executive Officer



Amendment No. 2
To
Contract No. GA180000034
For
Sodium Hypochlorite
Between
FSTI, Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be April 27, 2021 through April 26, 2022. One option will remain.
- 2.0 The City hereby grants a seven-and-eighty-two hundredths percent (7.82%) price increase to the subject contract. The price increase is displayed in the table below and will take affect on April 27, 2021.

Item	Item Description	Unit	Old Price	Modifier	New Price
1	Sodium Hypochlorite -Remote Facilities	Gal	No Bid	No Bid	No Bid
2	Sodium Hypochlorite – South Austin Regional WWTP (SAR)	Gal	\$0.64	1.0782	\$0.69

- 3.0 The total contract amount is increased by \$976,750.00, each and combined, by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 04/27/2018 – 04/26/2020	\$1,953,500.00	\$1,953,500.00
Amendment No. 1: Option 1 – Extension 04/27/2020 – 04/26/2021	\$976,750.00	\$2,930,250.00
Amendment No. 2: Option 2 – Extension 04/27/2021 – 04/26/2022 Price Increase of 7.82% 04/27/2021	\$976,750.00	\$3,907,000.00

- 4.0 MBE/WBE goals do not apply to this contract.
- 5.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 6.0 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.

Sign/Date:

 4/5/2021

Printed Name: Nicole Chambers
Authorized Representative

FSTI, Inc.
6300 Bridgepoint Parkway, Suite 1-200
Austin, Texas 78730
(512) 278-8800
nchambers@fstichem.com

Sign/Date:

Matthew Duree

Digitally signed by
Matthew Duree
Date: 2021.04.08
17:00:57 -05'00'

Matthew Duree
Procurement Manager

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



Amendment No. 2
To
Contract No. GA180000034
For
Sodium Hypochlorite
Between
PVS Technologies, Inc.
dba PVS Minibulk, Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be April 27, 2021 through April 26, 2022. One option will remain.
- 2.0 The total contract amount is increased by \$976,750.00, each and combined, by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 04/27/2018 – 04/26/2020	\$1,953,500.00	\$1,953,500.00
Amendment No. 1: Option 1 – Extension 04/27/2020 – 04/26/2021	\$976,750.00	\$2,930,250.00
Amendment No. 2: Option 2 – Extension 04/27/2021 – 04/26/2022	\$976,750.00	\$3,907,000.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the 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.

Sign/Date:

Printed Name: Matthew Duree
Authorized Representative

PVS Minibulk, Inc.
10900 Harper Avenue
Detroit, Michigan 48213
(313) 921-1200
dlorelli@pvschemicals.com

Matthew
Sign/Date: Duree

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

Digitally signed by
Matthew Duree
Date: 2021.04.08
17:00:00 -05'00'



Amendment No. 1
To
Contract No. GA180000034
For
Sodium Hypochlorite
Between
FSTI, Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be April 27, 2020 through April 26, 2021. Two options will remain.
- 2.0 The total contract amount is increased by \$976,750.00, each and combined, by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 04/27/2018 – 04/26/2020	\$1,953,500.00	\$1,953,500.00
Amendment No. 1: Option 1 – Extension 04/27/2020 – 04/26/2021	\$976,750.00	\$2,930,250.00

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- 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.

Sign/Date:

Handwritten signature of Nicole Chambers.

Printed Name: Nicole Chambers
Authorized Representative

FSTI, Inc.
6300 Bridgepoint Parkway, Suite 1-200
Austin, Texas 78730
(512) 278-8800
nchambers@fstichem.com

Sign/Date:

**Matthew
Duree**

Digitally signed by
Matthew Duree
Date: 2021.04.08
17:01:24 -05'00'

Matthew Duree
Procurement Manager

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



Amendment No. 1
to
Contract No. MA 2200 GA180000034
for
Sodium Hypochlorite
between
PVS Technologies Inc. dba PVS Minibulk Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be April 27, 2020 through April 26, 2021. Two options will remain.
- 2.0 The total contract amount is increased by \$976,750 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
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Amendment No. 1: Option 1 – Extension 04/27/2020 – 04/26/2021	\$976,750.00	\$2,930,250.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the 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.

Sign/Date: DAVID PHILIPS 4-3-20

Printed Name: DAVID PHILIPS
Authorized Representative
DIR OF NATIONAL SALES

Matthew
Duree

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

Digitally signed by
Matthew Duree
Date: 2020.04.06
12:02:14 -05'00'



City of Austin

Purchasing Office, Financial Services Department

P.O. Box 1088, Austin, TX 78767

April 27, 2018

PVS Technologies Inc. dba PVS Minibulk Inc.
Milisav Bulatovic
Treasurer
10900 Harper Avenue
Detroit, MI 48213
bids@pvschemicals.com

Dear Mr. Bulatovic:

The Austin City Council approved the execution of a contract with your company for Sodium Hypochlorite in accordance with the referenced solicitation.

Responsible Department:	Austin Water
Department Contact Person:	Lydia Torres, CTCM
Department Contact Email Address:	Lydia.Torres@austintexas.gov
Department Contact Telephone:	512-972-0329
Project Name:	Sodium Hypochlorite
Contractor Name:	PVS Technologies Inc. dba PVS Minibulk Inc.
Contract Number:	MA 2200 GA180000034
Contract Period:	4/27/18 – 4/26/2020
Dollar Amount	\$1,953,500 each and combined
Extension Options:	3 x 12 month options (\$976,750 each and combined per option)
Requisition Number:	RQM 17100600017
Solicitation Type & Number:	IFB 2200 GLB0070
Agenda Item Number:	22
Council Approval Date:	4/26/18

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,

Georgia Billela
Procurement Specialist III
City of Austin
Purchasing Office

cc: Lydia Torres
Andy Ramirez
Joaquin Ordonez

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
AND
PVS Technologies Inc. dba PVS Minibulk Inc. ("Contractor")
for
Sodium Hypochlorite
MA 2200 GA180000034**

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

This Contract is between PVS Technologies Inc. dba PVS Minibulk Inc. having offices at Detroit, MI and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number IFB 2200 GLB0070.

- 1.1 **This Contract is composed of the following documents:**
 - 1.1.1 This document
 - 1.1.2 The City's Solicitation, Invitation for Bid (IFB), 2200 GLB0070 including all documents incorporated by reference
 - 1.1.3 PVS Technologies Inc. dba PVS Minibulk Inc. Offer, dated 2/13/18
- 1.2 **Order of Precedence.** Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:
 - 1.2.1 This document
 - 1.2.2 The City's Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference
 - 1.2.3 The Contractor's Offer as referenced in Section 1.1.3
- 1.3 **Term of Contract.** The Contract will be in effect for an initial term of twenty-four (24) month and may be extended thereafter for up to three (3) twelve (12) month extension option(s), subject to the approval of the Contractor and the City Purchasing Officer or his designee. See the Term of Contract provision in Section 0400 for additional Contract requirements.
- 1.4 **Compensation.** The Contractor shall be paid a total Not-to-Exceed amount of \$1,953,500 each and combined for the initial Contract term and \$976,750 for each extension option as indicated in the Bid Sheet, IFB Section 0600. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.
- 1.5 **Quantity of Work.** There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order

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

1.6.1 PVS Technologies Inc. dba PVS Minibulk Inc. awarded line 1 @ 0.9876 per gallon

1.6.2 FSTI Inc. awarded line 2 @ \$0.64 per gallon

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

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

PVS Technologies Inc. dba
PVS Minibulk Inc.

CITY OF AUSTIN

JOHN CANNON
Printed Name of Authorized Person

Georgia Billela
Printed Name of Authorized Person

[Signature]
Signature

[Signature]
Signature

VICE PRESIDENT + GM
Title:

Procurement Specialist III
Title:

4/26/2018
Date:

4/27/18
Date:

CITY OF AUSTIN

[Signature]
Printed Name of Authorized Person

Matthew Duren
Signature

Procurement Supervisor
Title:

4-27-18
Date:



CITY OF AUSTIN, TEXAS

Purchasing Office INVITATION FOR BID (IFB) OFFER SHEET

SOLICITATION NO: 2200 GLB0070

COMMODITY/SERVICE DESCRIPTION: Sodium Hypochlorite

DATE ISSUED: January 29, 2018

REQUISITION NO.: 17100600017

BID DUE PRIOR TO: Thursday, February 15, 2018 @ 2:00 PM

COMMODITY CODE: 2450580
**FOR CONTRACTUAL AND TECHNICAL
ISSUES CONTACT THE FOLLOWING
AUTHORIZED CONTACT PERSON:**

BID OPENING TIME AND DATE: February 15, 2018 @ 3:00 PM

Georgia Billela

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET
RM 308, AUSTIN, TEXAS 78701

Procurement Specialist III

Phone: (512) 974-2939

E-Mail: georgia.billela@austintexas.gov

LIVE BID OPENING ONLINE:

Sandy Wirtanen

Procurement Specialist IV

Phone: (512) 974-7711

E-Mail: sandy.wirtanen@austintexas.gov

For information on how to attend the Bid Opening 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 # GLB0070	Purchasing Office-Response Enclosed for Solicitation # GLB0070
P.O. Box 1088	124 W 8 th 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.

The Vendor agrees, if this Offer is accepted within 120 calendar days after the Due Date, to fully comply in strict accordance with the Solicitation, specifications and provisions attached thereto for the amounts shown on the accompanying Offer.

SUBMIT 1 ORIGINAL AND 1 ELECTRONIC THUMB/FLASH 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	11
0500	SPECIFICATION	3
ATT	ATTACHMENT A – CHEMICAL DELIVERY NOTICE	1
0600	BID SHEET – Must be completed and returned with Offer	2
0605	LOCAL BUSINESS PRESENCE IDENTIFICATION FORM – Complete & return	2
0700	REFERENCE SHEET – Complete and return if required	2
0800	NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION–Complete and return	2
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	*
0810	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION	*
0835	NONRESIDENT BIDDER PROVISIONS – Complete & return	1
0900	SUBCONTRACTING/SUB-CONSULTING UTILIZATION FORM – Complete & return	1
0905	SUBCONTRACTING/SUB-CONSULTING UTILIZATION PLAN – Complete and return if applicable	3

*** 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

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 8th 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.

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: PVS Minibulk, Inc.

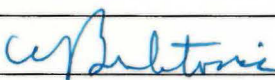
Company Address: 10900 Harper Avenue

City, State, Zip: Detroit, MI 48213

Federal Tax ID No. _____

Printed Name of Officer or Authorized Representative: Milisav Bulatovic

Title: Treasurer

Signature of Officer or Authorized Representative: 

Date: February 13th, 2018

Email Address: bids@pvschemicals.com

Phone Number: 313-921-1200 / 888-711-3445

*** Completed Bid Sheet, section 0600 must be submitted with this signed Offer Sheet to be considered for award**

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

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

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

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

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

10. WORKFORCE

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

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

12. INVOICES:

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

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

13. PAYMENT:

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

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

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

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

15. FINAL PAYMENT AND CLOSE-OUT:

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

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

17. AUDITS and RECORDS:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. Records Retention:
 - i. 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.
 - ii. All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City
 - iii. The Contractor shall retain all Records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.
- C. The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.

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18. SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
 - i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. WARRANTY-PRICE:

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.

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20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.
21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
- A. Recycled Deliverables shall be clearly identified as such.
 - B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
 - E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be

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required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

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30. DELAYS:

- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. INDEMNITY:

- A. Definitions:
 - i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
 - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
 - ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.
- B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

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

A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the

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City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

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

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

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the

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Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

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

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39. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
40. **NO CONTINGENT FEES**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
41. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
42. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
43. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
44. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
45. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
46. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
47. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been 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.

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48. DISPUTE RESOLUTION:

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

49. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

50. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

51. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11

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Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

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

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

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

54. **EQUAL OPPORTUNITY**

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

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

- A. Definitions. As used in this paragraph –
- i. "Component" means an article, material, or supply incorporated directly into an end product.
 - ii. "Cost of components" means -
 - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

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

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

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

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

10. WORKFORCE

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

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

12. INVOICES:

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

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13. PAYMENT:

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

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

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

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

15. FINAL PAYMENT AND CLOSE-OUT:

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

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

17. AUDITS and RECORDS:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. Records Retention:
 - i. 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.
 - ii. All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City
 - iii. The Contractor shall retain all Records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.
- C. The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.

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18. SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
 - i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. WARRANTY-PRICE:

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.

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20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.
21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
- A. Recycled Deliverables shall be clearly identified as such.
 - B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
 - E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be

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required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

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30. DELAYS:

- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. INDEMNITY:

- A. Definitions:
 - i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
 - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
 - ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.
- B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

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

- A. General Requirements.
 - i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
 - ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the

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City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

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

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

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the

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Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

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

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39. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
40. **NO CONTINGENT FEES**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
41. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
42. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
43. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
44. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
45. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
46. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
47. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been 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.

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48. DISPUTE RESOLUTION:

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

49. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

50. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

51. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11

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Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

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

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

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

54. **EQUAL OPPORTUNITY**

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

B. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

55. **INTERESTED PARTIES DISCLOSURE**

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

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

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

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

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SODIUM HYPOCHLORITE
IFB GLB0070**

The following Supplemental Purchasing Provisions apply to this solicitation:

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

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by email to georgia.billela@austintexas.gov no later than close of business five (5) business days before the bid due date.

2. INSURANCE: Insurance is required for this solicitation.

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

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

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

OR

PURInsuranceCompliance@austintexas.gov

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:

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IFB GLB0070**

- (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Contractor/Subcontracted Work.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.
 - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
- iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
- (1) The policy shall include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
- iv. **Hazardous Materials Insurance:** For Work which involves hazardous materials CONTRACTOR or Subcontractor responsible for the Work shall comply with the following insurance requirements in addition to those specified above:
- (1) Provide a pollution endorsement to the Commercial General Liability policy with minimum bodily injury and property damage limits of \$1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of \$1,000,000. This policy shall not exclude hazardous materials or pollution, and shall provide "occurrence" coverage without a sunset clause.
 - a. The policy shall provide 30 day Notice of Cancellation
 - b. Waiver of Subrogation endorsements in favor of OWNER.
 - (2) CONTRACTOR or Subcontractor responsible for transporting any hazardous materials shall provide pollution coverage. Federal law requires interstate or intrastate transporters of hazardous materials to provide an MCS 90 endorsement with a \$5,000,000 limit when transporting hazardous materials in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. Interstate transporters of hazardous materials in non-bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more must provide an MCS 90 endorsement with a \$1,000,000 limit. The terms "conveyance" and "bulk" are defined by Title 49 CFR 171.8. All other transporters of hazardous material shall provide either an MCS 90 endorsement with minimum limits of \$1,000,000 or an endorsement to their Commercial General Liability Insurance policy which provides coverage for bodily injury and property damage arising out of the transportation of hazardous materials. The endorsement shall, at a minimum, provide a \$1,000,000 limit of liability and cover events arising from fire, wind, hail, lightning, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.

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

3. TERM OF CONTRACT:

- A. The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of twenty-four (24) months. The Contract may be extended beyond the initial term for up to three (3) additional twelve (12) month periods at the City's sole option. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
- B. Upon expiration of the initial term or any 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 for the City to re-solicit and/or complete the deliverables due under this Contract. Any hold over period will not exceed 120 calendar days unless mutually agreed on by both parties 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.

4. **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.

5. DELIVERY REQUIREMENTS FOR ALL FACILITIES:

- A. Contractors shall be responsible for contacting the Plant(s) and requesting a site visit to ensure delivery conditions are acceptable PRIOR to submitting a bid. Otherwise, the City will assume that the delivery conditions are acceptable to the Contractor submitting a bid.
- B. The City has had issues with Contractors changing trucking companies and the new truck drivers are not aware of our specifications. Therefore, if the Contractor changes the trucking company to one that is different than the one listed on the bid sheet, the Contractor must notify the Plant Supervisor or designee, in writing, at least one week prior to any deliveries made by the new company.
- C. The Contractor shall be fully responsible for cleanup of any spillage or leakage and repairing any property damage occurring during transportation and/or on the Plant site due to defective pumping and/or unloading equipment and/or negligence of the driver. Cleanups/repairs shall be completed before the driver leaves the facility, if possible. If an immediate cleanup/repair is not possible, the Contractor shall then complete the cleanup/repairs within five (5) business days.
- D. If a delivery needs to be rescheduled, the Contractor shall notify the Plant Supervisor or designee in writing no later than close of business the day before originally scheduled delivery date.

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- E. Delivery drivers must be able to speak fluent English. This is vital since, prior to accepting a load, a sample will be taken and testing will take place to ensure compliance with the City's specifications. Otherwise, the load may be rejected by the Plant Supervisor or designee.
- F. The truck driver must check in at the administrative building upon arrival. The driver must show his driver's license. The driver shall not offload the product unless the Plant Supervisor or designee accompanies the driver to the area where the product will be unloaded.
- G. The Contractor shall accept orders that will be placed by phone/fax/email by the Plant Supervisor or designee, on an "as needed" basis. The Contractor shall confirm the quantity to be shipped on orders within two (2) hours of notification by phone from the Plant Supervisor or designee.
- H. The Contractor shall confirm delivery date within two business days of receiving the order request. No partial shipment or backorders shall be allowed.
- I. The Contractor shall obtain sign-off on the Chemical Delivery Notice on every delivery see Attachment A. A Chemical Delivery Notice shall be submitted to the Plant Supervisor or designee, a minimum four (4) hours prior to delivery. "Estimated Arrival Time" on the Chemical Delivery Notice should be completed with an estimate not exceeding a two-hour window.
- J. The Sodium Hypochlorite will be purchased on a volume (gallons) basis. The Contractor shall furnish weight certificates from the State of Texas certified scales in the Austin area. An individual certified scale receipt indicating the date, the tare, and gross weight shall accompany each delivered load. A Safety Data Sheet (SDS) shall also be provided with each delivered load. Failure to provide these documents on or before each delivery may constitute grounds for termination of the contract.
- K. The City reserves the right to collect a sample and perform a test prior to the offloading the delivery. If the test fails, the Plant Supervisor or designee will decide as to whether the truck will be allowed to unload or be rejected.
- L. Delivery shall be made Monday thru Friday (except on City observed holidays) between the hours of 7:30 a.m. and 2:00 p.m. Central Time unless location placing the order has set a different day and time for the order. If the Contractor makes a delivery on any date/time other than the scheduled delivery date/time, the City will not be charged demurrage for any delays encountered in unloading the truck. The Plant Supervisor or designee will be present during all deliveries. The delivery driver shall remain with the truck during the unloading process.
- M. If a truck arrives to deliver on a Saturday, Sunday, holiday, or after 2:00 p.m. Central Time (City regular work day) without the prior approval from the Plant Supervisor or designee, the City will charge the Contractor any and all overtime and call back expenses for unloading. Otherwise, the Contractor or the City can decide that the truck will not be unloaded until normal City working hours.
- N. **The Contractor shall complete by 2:00 p.m.** Central Time any transferring to the storage tank without demurrage of additional truck standing time charges. Should a delivery be completed after 2:00 pm Central Time, the Contractor shall be responsible for all associated costs, including any overtime required for City employees working outside of their normal business hours to accept the delivery.
- O. The Contractor shall allow a minimum two (2) hour time requirement for transferring the product from the delivery truck into the City's tank without demurrage of additional truck standing time charges.

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- P. Inlet fittings provided by the City are:
- For both Remote and SAR Facilities – 2" cam-lock PVC inlet fitting
- Q. The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the description of each item, quantity, and unit price.
- R. Unless requested by the Plant Supervisor or designee, deliveries shall not be made on City-recognized legal holidays (see paragraph 51 in Section 0300).
- S. The Contractor and any subcontractors shall wear the necessary Personal Protective Equipment (PPE) while on City property. PPE required will vary depending on the chemical being delivered, City procedure, and construction activity on site; PPE may include long pants, long-sleeved shirt, work boots with safety toe, safety glasses, reflective vest, hard hat, and any PPE required as is appropriate for the chemical being delivered. PPE shall be provided at no additional expense to the City.
- T. The Contractor may be required to deliver on holidays and weekends, as needed. Orders shall be made in full truckloads only. Deliveries will not be accepted at other times unless scheduled and approved by the Plant Supervisor or designee.
- U. Contractors shall note that the plants are not serviced by rail. Delivery shall be made in bulk trucks. Trucks shall be fully equipped with the correct unloading equipment, hoses and fittings to transfer the product.
- V. The plant inlets for the product storage tanks are located at elevations of up to 4 feet above grade. The delivery trucks shall be equipped with a minimum 40-foot hose, the proper fittings to attach to the City's inlets, and pump or pneumatic delivery system capable of transferring the product from the truck to the storage tanks, without the use of City resources. If air is used to transfer the product from the truck to the City's tank, the truck shall have a self-contained air supply and a functioning regulator capable of regulating the air pressure to a minimum of 14 psi. If a pump is used to transfer the product from the truck to the City's tank, the Contractor shall ensure the pump and associated piping/appurtenances are clean and free of dirt, debris, or other chemicals. The Contractor may connect his own set of adapters to all of the City's inlets (during the contract period) which will be standard to all of the truck couplers.
- W. In an emergency, the City may require partial deliveries from a single truckload to be made at more than one location. The City will pay a reasonable additional standard freight charge for split deliveries made at the request of the City.

6. DELIVERY REQUIREMENTS FOR REMOTE FACILITIES:

- A. The Contractor shall deliver on a 7-calendar day cycle, including weekends and Holidays for approximately 100-400 gallons per order for a total of approximately 24,000 gallons per year during contract period.
- B. Orders shall be made in full truckloads only. Deliveries will not be accepted at other times unless scheduled and approved by the Plant Supervisor or designee.
- C. The Contractor shall top off all bleach tanks a minimum of 1 time every 7 calendar days, including Holidays or as requested by the Plant Supervisor or designee.

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D. Remote Facilities:

Ellery Studivant, Division Manager 512-972-0610 ellery.studivant@austintexas.gov Walnut Creek WWTP 7113 FM 969 Austin, TX 78724		
Locations For Delivery	Tank Size (gallons)	Number of Tanks
Dessau WWTP 1601 Fish Lane Pflugerville, TX 78660	500	1
Harris Branch WWTP 11800 A. Lansdowne Rd. Austin, TX 78653	1,500	1
Balcones Water Reclamation Plant 12007 Spicewood Parkway Austin, TX 78651	500	1
River Place WWTP 8825 Big View Dr. Austin, TX 78730	500	1

7. DELIVERY REQUIREMENTS FOR SOUTH AUSTIN REGIONAL WWTP:

- A. Delivery is to be made within 5 calendar days after the order is placed, including weekends and Holidays. The Contractor shall accept orders by phone/fax/email, on an "as needed" basis no partial shipment or backorder shall be allowed. The Contractor shall deliver to these locations on an as needed basis with a minimum of 24-hours notification. The order shall specify the amount of chemical up to a maximum of 4,800 gallons per delivery per order for a total of approximately 1,400,000 gallons per year during a contract period.

Richard O'Donnell, Plant Supervisor 512-972-0614 richard.odonnell@austintexas.gov South Austin Regional WWTP 1017 Fallwell Lane Del Valle, TX 78617		
Locations For Delivery	Tank Size (gallons)	Number of Tanks
South Austin Regional WWTP 1017 Fallwell Lane Del Valle, TX 78617	8,700	4
	1,500	2
	275	10

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8. 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 Contractor. In addition, the date delivery was made and location of delivery shall be included in the Invoice.
- B. Invoices shall include a completed and signed Chemical Delivery Notice and certified scale receipt for each delivery. The City will pay based on gallons of liquid Sodium Hypochlorite with a minimum 12.5% of available chlorine by weight, as stated in the certificate of analysis received with each load. The City will spot check loads and if there is a discrepancy between the City's results and the certificate of analysis, the City's result will be the one used for payment. If the Contractor disagrees, a third party lab will be retained to run the sample. If the result is closer to the City's result, the Contractor will pay for the analysis. If the result is closer to the Contractor's result, the City will pay.
- C. Invoices shall be mailed (emailed invoices will *not* be accepted) within five (5) calendar days after each delivery to the address where the delivery was made:

	Remote Facilities:		
Municipality	City of Austin		
Department	Austin Water, Remote Facilities		
Attn:	Ellery Studivant, Division Manager		
Address	7113 FM 969		
City, State Zip Code	Austin, TX 78724		

	South Austin Regional WWTP		
Municipality	City of Austin		
Department	Austin Water, South Austin Regional WWTP		
Attn:	Richard O'Donnell, Plant Supervisor		
Address	1017 Fallwell Ln.		
City, State Zip Code	Austin, TX 78617		

- D. Invoices shall include, but are not limited to the following:
- Contractor's name, on a professionally pre-printed, sequentially numbered form
 - Contractor's address and phone number
 - City's contract number/purchase order number
 - Date of each delivery
 - Location of each delivery
 - Itemized description of service and pricing for each delivery
 - Chemical Delivery Notice

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

9. HAZARDOUS MATERIALS:

- A. If this Solicitation involves hazardous materials, the Offeror shall furnish with the Offer Safety Data Sheets (SDS), (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 SDS as part of the Offer may subject the Offer to disqualification from consideration for award.
- C. The SDS, instructions and information required in paragraph "A" must be included with each shipment under the contract.

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. WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):

- A. Access to the Austin Water Department facility by the Contractor, all subcontractors and their employees will be strictly controlled at all times by the City. The Contractor shall submit a complete list of all persons requiring access to the Austin Water facility at least thirty (30) days in advance of their need for access. The City reserves the right to deny access to any Contractor personnel for reasonable cause. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor's submittal.

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- B. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the contract, the Contractor shall so notify the City's Contract Manager, in writing, within ten (10) days of the receipt of notification of denial.
- C. Contractor personnel/driver will be required to check in at gate driver must provide a State of Texas issued picture ID to the Plant staff, no exceptions, when entering or leaving the Austin Water facility. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule. Security badges may not be removed from the premises.
- D. The Contractor shall provide the City's Contract Manager with a list of personnel scheduled to enter the building, seven days in advance. The list shall identify the persons by name, date of birth, driver's license number, the times that they will be onsite and the area(s) where they will be working. Only persons previously approved by the City will be admitted to the facility.
- E. The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees and subcontractors are kept fully informed as to these requirements.

12. 11. ECONOMIC PRICE ADJUSTMENT:

- A. **Price Adjustments:** Prices shown in this Contract shall remain firm for the first twelve 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 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.

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- 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:** Complete table as they may apply.

Weight % or \$ of Base Price: 100%	
Database Name: Producer Product Index	
Series ID: PCU325998325998A	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: National	
Description of Series ID: Water treating compounds	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: All	

- E. **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

- F. 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.

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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. **WORKING ON OR NEAR ENERGIZED EQUIPMENT – ARC FLASH PROTECTION (reference Section 0300 Paragraph 11. Compliance With Health, Safety, and Environmental Regulations):** Contractor's employees shall wear at all times the proper personal protective equipment and clothing required for the head, face, torso, arms, hands, and lower body that provides a minimum Arc Thermal Protection Value (ATPV) of 12 calories per square centimeter (cal/cm²) when working on or near energized electrical equipment, or greater, if required by the NFPA Standard 70E and/or Article 410 of the NESC for the work being performed.
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:

Lydia Torres, Contract Mgmt. Specialist III

512-972-0329

Lydia.torres@austintexas.gov

CITY OF AUSTIN
PURCHASE SPECIFICATION
FOR
SODIUM HYPOCHLORITE
IFB 2200 GLB0070

1.0 PURPOSE

The City of Austin (City) seeks bids in response to this solicitation to establish a contract(s) with a qualified Vendor (Contractor) who can provide Sodium Hypochlorite. The Sodium Hypochlorite will be used at Austin Water facilities in the disinfection treatment processes and used for filament bacteria control. The City reserves the right to add or delete departments and locations as deemed necessary at the same bid price.

Any services that have been omitted from this specification which are clearly necessary or in conformance with Sodium Hypochlorite, shall be considered a requirement although not directly specified or called for in this scope of work.

2.0 APPLICABLE SPECIFICATIONS

- 2.1 The Contractor shall ensure the Sodium Hypochlorite complies with federal, state and local laws, ordinances, and guidelines for this type of chemical.
- 2.2 The Sodium Hypochlorite shall comply with American Water Works Association (AWWA) standards as contained in the most recent AWWA B300 publication, except for any modifications contained in these specifications.
- 2.3 The Sodium Hypochlorite shall be certified as suitable for contact with or treatment of drinking water by an accredited certification organization in accordance with ANSI/NSF Standard 60, Drinking Water Treatment Chemicals – Health Effects.
- 2.4 The Contractor shall comply with:
 - 2.4.1 Environmental Protection Agency (EPA).
 - 2.4.2 Texas Commission on Environmental Quality (TCEQ).
 - 2.4.3 Occupational Safety and Health Administration (OSHA) safety requirements.
 - 2.4.4 Federal Motor Carrier Safety Regulations, specifically 49CFR part 383.
 - 2.4.5 City of Austin Ordinances and regulations.

3.0 MATERIAL REQUIREMENTS

- 3.1 The Sodium Hypochlorite shall be composed of the following:
 - Available chlorine (% by weight) -12.5%
 - Specific Gravity 1.19 – 1.26 @ 20 degrees Celsius
 - Virgin Sodium Hydroxide (% by weight) < 2%
 - Must be a clear yellowish green product (yellowish brown will not be accepted)
 - Formula NaOCl
- 3.2 The Sodium Hypochlorite shall be suitable for use in municipal water supplies and, when used in standard recommended dosages, shall not contain any impurities that would cause water to be unsuited for human consumption.
- 3.3 The Sodium Hypochlorite shall be free of any inorganic or organic substances in quantities capable of producing deleterious or injurious effects of the health of those consuming the water that has been properly treated with the Sodium Hypochlorite.

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- 3.4 The Sodium Hypochlorite shall not contain any impurities that would impart a taste and/or odor to the drinking water.

4.0 CONTRACTOR RESPONSIBILITIES

- 4.1 The Contractor shall be a manufacturer, authorized dealer/reseller, or supplier of the products offered.
- 4.2 Contractors shall ***include in the bid submittal*** an affidavit that the Sodium Hypochlorite complies with the applicable requirements of this specification, along with a Safety Data Sheet (SDS) and Federal DOT number.
- 4.3 The Contractor shall call the Plant Supervisor to schedule a kick-off meeting with five (5) business days to discuss this contract, delivery schedule and requirements.
- 4.4 The Contractor shall also provide at the kick-off meeting, a 24-hour office phone number, cell phone number, fax number and representative who will be able to respond to this contract.
- 4.5 The Contractor and employees shall wear the necessary Personal Protective Equipment (PPE) while on City property; to include helmet, vest, and steel-toed boots.
- 4.6 Manufacturer Data – the Contractor shall indicate the manufacturer's name of the product and shall indicate the shipping address/location from where the material is being shipped. In the event this information changes during the contract period and prior to the shipping the first shipment from the new location, the Contractor shall submit written notification to each Plant facility.
- 4.7 The City reserves the right to test the Contractor's product at any time during the contract period.
- 4.8 The Contractor shall notify the Plant Supervisor or designee in writing throughout the life of the contract of any changes in manufacture, product name and/or, if a manufacturer discontinues a Contract Item.
- 4.9 The Contractor shall request in writing approval from the Plant Supervisor or designee on any contract product substitution.
- 4.10 The Contractor shall be responsible for cleanup of any spillage or leakage during transportation and/or on the plant site due to defective unloading and/or negligence of the driver. The City reserves the right to inspect and reject any Sodium Hypochlorite shipment.
- 4.11 The Contractor shall replace the Sodium Hypochlorite within 12 hours of notification if the Plant Supervisor or designee notices that it is not meeting requirements. The Contractor shall remove the chemical and replace it with an equivalent volume of the acceptable chemical.
- 4.12 The Contractor shall include ***with the bid submittal*** a certified analysis of the Sodium Hypochlorite. This analysis shall include the following:
- Percent (%) by weight of Cl₂ (Available Chlorine)
 - Percent (%) by weight of NaOH (Sodium Hydroxide)
 - Percent (%) by weight of NaOCl (Sodium Hypochlorite)
 - Specific gravity
 - Color/Clarity

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IFB 2200 GLB0070

5.0 SAFETY DATA SHEET (SDS) REQUIREMENTS

- 5.1 An SDS shall be included ***with the bid submittal***. Upon award, an electronic copy of the SDS with contract information shall be transmitted by the Contractor to the following City email address: David.Gaines@austintexas.gov .
- 5.2 Contracts for Supply of Hazardous Materials: With respect to all contracts under which the Contractor will deliver a "hazardous material" for which a "Safety Data Sheet" ("SDS") is required under Texas Health & Safety Code, Sec. 502.006, as amended, will provide, on or before the date of each delivery of the hazardous material, an electronic version of the most current "Safety Data Sheet" meeting the requirements set forth in Sec. 502.006, Texas Health & Safety Code. Each SDS provided shall bear the date when it was last revised.
- 5.3 The Contractor shall provide the City with a copy of the Safety Data Sheet on or before the date of each delivery of the chemical. Failure to provide the Safety Data Sheet on or before the date of each delivery may constitute grounds for termination of the contract.

6.0 CITY RESPONSIBILITIES

- 6.1 The Plant Supervisor or designee will provide updated Point of Contact for this contract if any changes of personnel occur during the term of this contract.

7.0 SECURITY

- 7.1 The City requires the Contractor to identify bulk chemical deliveries and driver information to the treatment plants to assure safe and accurate orders. The Contractor shall FAX a completed "Chemical Delivery Notice" to the Plant Supervisor or designee within 4 business hours prior to dispatching driver for delivery. The driver must provide a photo ID (any U.S. state) to the Plant Supervisor or designee, no exceptions.
- 7.2 Transportation of Hazardous Material to a City location must be in compliance with the Federal Motor Carrier Safety Regulations, specifically 49CFR part 383 which governs commercial driver license standards requirements and penalties. In accordance with this regulation, delivery driver shall present to Plant staff a Class C CDL with an H or an X endorsement at the time of delivery.
- 7.3 Hazardous Material is defined under 49 CFR part 383.5 as:

Any material that has been designated as hazardous referencing 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR Subpart F, Part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

SECTION 0600 - BID SHEET
CITY OF AUSTIN
SODIUM HYPOCHLORITE

2/15

SOLICITATION NO.: IFB GLB0070

AWU 816

Special Instructions: The City intends to award one contract based on overall low cost however reserves the right to make multiple awards based on individual or groups of specific line items, cost, 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. Be advised that exceptions taken or qualifying statements made to any portion of the solicitations may jeopardize acceptance of the bid and may result in disqualification of the bid. Prices being submitted shall include ALL discounts, handling and shipping charges, FOB Destination.

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 noted below are annual estimates and not a guarantee of actual volume. The City does not guarantee the purchase of the quantities listed. Quantities are provided as a guide based on historical usage. Actual purchases may be more or less.

Failure to respond to each section of this bid sheet may result in disqualification of your bid.

ITEM NO	ITEM DESCRIPTION	ESTIMATED ANNUAL QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
1	Sodium Hypochlorite - Remote Facilities MFG. NAME: FSTI, Inc.	24,000	GAL	\$0.9876/GAL	\$23,702.40
2	Sodium Hypochlorite - South Austin Regional WWTP (SAR) MFG. NAME:	1,400,000	GAL	No bid	No bid
TOTAL					\$23,702.40

Additional Products or Catalog Items (FOR INFORMATIONAL PURPOSE - PRICING FOR THIS SECTION WILL NOT BE USED TO DETERMINE AWARD):

Please provide any other products or catalog items you will provide the City and the prices you would charge. This information will not be used in the evaluation of the bid and is for informational purposes only. There is no guarantee of purchase.

Please list any additional products or catalog items your Company offers and the associated discount off retail price or mark-up to cost for the listed products or catalog items. A bid of zero ('0') will be interpreted by the City that the additional products or catalog items will be sold at the Manufacturer's Suggested Retail Price. A 'no bid' or blank entry will be interpreted by the City that your Company does not wish to provide additional products or catalog items. This information is for informational purposes only and will not be evaluated. The City does not guarantee the purchase of any additional products or catalog items.

ITEM NO.	DESCRIPTION OF OTHER SERVICES OR PRODUCTS	PRICE* LATEST EFFECTIVE DATE OF PRICE LIST	UNIT OF MEASURE
4	Percentage discount off catalogue/price list of other items: Indicate the discount from Manufacturer's Suggested Retail Price.		0 % Discount
5	Other: Zero Net 30 Days Terms.		

* Unless otherwise specified, Price may be quoted as a firm-fixed price or as a percentage discount from quoteder's regular fees.

SECTION 0600 - BID SHEET
CITY OF AUSTIN
SODIUM HYPOCHLORITE

Please check the boxes below as confirmation.

<input checked="" type="checkbox"/>	Offer Sheet - required	
<input checked="" type="checkbox"/>	Bid Sheet (Section 0600) -required	
<input checked="" type="checkbox"/>	Local Business Presence Identification Form (Section 0605) - If applicable	
<input checked="" type="checkbox"/>	Reference Sheet (Section 0700) -required	
<input checked="" type="checkbox"/>	Non-Discrimination and Non-Retaliation Certification (Section 0800) -required	
<input checked="" type="checkbox"/>	Nonresident Provisions (Section 0835)- required	
<input checked="" type="checkbox"/>	Sub-Contracting/Sub-Consulting Utilization Form (Section 0900) - required	
<input checked="" type="checkbox"/>	Copy of return policy and credit memo procedures- if applicable	N/A
<input checked="" type="checkbox"/>	Safety Data Sheet for SODIUM HYPOCHLORITE-REQUIRED	<input checked="" type="checkbox"/> EMAILED TO (after award) david.gaines@austintexas.gov
<input checked="" type="checkbox"/>	Affidavit for SODIUM HYPOCHLORITE compliance-REQUIRED	
<input checked="" type="checkbox"/>	Certified Analysis for SODIUM HYPOCHLORITE -REQUIRED	
<input checked="" type="checkbox"/>	I UNDERSTAND THAT FAILURE TO SUBMIT THE COMPLETED FORMS ABOVE MAY RESULT IN DISQUALIFICATION OF MY BID	
<input checked="" type="checkbox"/>	I UNDERSTAND THAT SUBMITTING WITH MY BID ANY CLARIFICATION STATEMENTS, QUALIFYING STATEMENTS, AND/OR EXCEPTIONS TO THE CITY'S TERMS AND CONDITIONS MAY RESULT IN DISQUALIFICATION OF MY BID	
DELIVERY TERMS: DELIVERY IS TO BE FOB DESTINATION, PREPAID AND ALLOWED		
Delivery Method: PVS Minibulk Tanker		
Company Name: PVS Minibulk, Inc.		

Not applicable.

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	PVS Minibulk, Inc.	
Physical Address	10900 Harper Avenue, Detroit MI 48213	
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

Not applicable.

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	Not Applicable	
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 SheetResponding Company Name PVS Minibulk, Inc.

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 | <u>City of Dallas</u> |
| Name and Title of Contact | <u>Michelle Chamoski, Purchasing</u> |
| Project Name | <u>Supplying Sodium Hypochlorite</u> |
| Present Address | <u>1500 Marilla Room 3FN</u> |
| City, State, Zip Code | <u>Dallas, TX 75201</u> |
| Telephone Number | <u>(214) 671-8287</u> Fax Number <u>()</u> |
| Email Address | <u>michelle.chamoski@dallascityhall.com</u> |
| 2. Company's Name | <u>City of Garland</u> |
| Name and Title of Contact | <u>Purchasing</u> |
| Project Name | <u>Supplying Sodium Hypochlorite</u> |
| Present Address | <u>13835 County Road 489</u> |
| City, State, Zip Code | <u>Nevada, TX</u> |
| Telephone Number | <u>(512) 278-8800</u> Fax Number <u>()</u> |
| Email Address | <u></u> |
| 3. Company's Name | <u>Upper Trinity Water District</u> |
| Name and Title of Contact | <u>Purchasing</u> |
| Project Name | <u>Supplying Sodium Hypochlorite</u> |
| Present Address | <u>900 North Kealy Street</u> |
| City, State, Zip Code | <u>Lewisville, TX</u> |
| Telephone Number | <u>(972) 219-1228</u> Fax Number <u>()</u> |
| Email Address | <u></u> |

City of Austin, Texas

Section 0800

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 13th day of February, 2018

CONTRACTOR

PVS Minibulk, Inc.

Authorized Signature



Title

Milisav Bulatovic
Treasurer

Section 0835: Non-Resident Bidder Provisions

Company Name PVS Minibulk, Inc.

- 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: Non-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: No Which State: Michigan

- 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: SUBCONTRACTING/SUB-CONSULTING UTILIZATION FORM

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form**

SOLICITATION NUMBER: GLB0070

SOLICITATION TITLE: Sodium Hypochlorite

In accordance with the City of Austin's Minority and Women-Owned Business Enterprises (M/WBE) Procurement Program (Program), Chapters 2-9A/B/C/D of the City Code and M/WBE Program Rules, this Solicitation was reviewed by the Small and Minority Business Resources Department (SMBR) to determine if M/WBE Subcontractor/Sub-Consultant ("Subcontractor") Goals could be applied. Due to insufficient subcontracting/subconsultant opportunities and/or insufficient availability of M/WBE certified firms, SMBR has assigned no subcontracting goals for this Solicitation. However, Offerors who choose to use Subcontractors must comply with the City's M/WBE Procurement Program as described below. Additionally, if the Contractor seeks to add Subcontractors after the Contract is awarded, the Program requirements shall apply to any Contract(s) resulting from this Solicitation.

Instructions:

- a.) Offerors who do not intend to use Subcontractors shall check the "NO" box and follow the corresponding instructions.
b.) Offerors who intend to use Subcontractors shall check the applicable "YES" box and follow the instructions. **Offers that do not include the following required documents shall be deemed non-compliant or nonresponsive as applicable, and the Offeror's submission may not be considered for award.**

☒ **NO, I DO NOT intend to use Subcontractors/Sub-consultants.**

Instructions: Offerors that do not intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form) and include it with their sealed Offer.

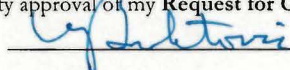
☐ **YES, I DO intend to use Subcontractors/Sub-consultants.**

Instructions: Offerors that do intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form), and follow the additional Instructions in the (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan). Contact SMBR if there are any questions about submitting these forms.

Offeror Information			
Company Name	PVS Minibulk, Inc.		
City Vendor ID Code			
Physical Address	10900 Harper Avenue		
City, State Zip	Detroit, MI 48213		
Phone Number	313-921-1200	Email Address	bids@pvschemicals.com
Is the Offeror City of Austin M/WBE certified?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES Indicate one: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture		

Offeror Certification: I understand that even though SMBR did not assign subcontract goals to this Solicitation, I will comply with the City's M/WBE Procurement Program if I intend to include Subcontractors in my Offer. I further agree that this completed **Subcontracting/Sub-Consulting Utilization Form**, and if applicable my completed **Subcontracting/Sub-Consulting Utilization Plan**, shall become a part of any Contract I may be awarded as the result of this Solicitation. Further, if I am awarded a Contract and I am not using Subcontractor(s) but later intend to add Subcontractor(s), before the Subcontractor(s) is hired or begins work, I will comply with the City's M/WBE Procurement Program and submit the **Request For Change** form to add any Subcontractor(s) to the Project Manager or the Contract Manager for prior authorization by the City and perform Good Faith Efforts (GFE), if applicable. I understand that, if a Subcontractor is not listed in my **Subcontracting/Sub-Consulting Utilization Plan**, it is a violation of the City's M/WBE Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begin work, unless I first obtain City approval of my **Request for Change** form. I understand that, if a Subcontractor is not listed in my **Subcontracting/Sub-Consulting Utilization Plan**, it is a violation of the City's M/WBE Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begin work, unless I first obtain City approval of my **Request for Change** form.

Milisav Bulatovic/Treasurer

 02/13/18

Name and Title of Authorized Representative (Print or Type)

Signature/Date

Section 0905: SUBCONTRACTING/SUB-CONSULTING UTILIZATION PLAN

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan**

SOLICITATION NUMBER: GLB0070
SOLICITATION TITLE: Sodium Hypochlorite

INSTRUCTIONS: Offerors who DO intend to use Subcontractors may utilize M/WBE Subcontractor(s) or perform Good Faith efforts when retaining Non-certified Subcontractor(s). Offerors must determine which type of Subcontractor(s) they are anticipating to use (CERTIFIED OR NON-CERTIFIED), check the box of their applicable decision, and comply with the additional instructions associated with that particular selection.

- ☐ I intend to use City of Austin CERTIFIED M/WBE Subcontractor/Sub-consultant(s).

Instructions: Offerors may use Subcontractor(s) that ARE City of Austin certified M/WBE firms. Offerors shall contact SMBR (512-974-7600 or SMBRComplianceDocuments@austintexas.gov) to confirm if the Offeror's intended Subcontractor(s) are City of Austin certified M/WBE and if these firm(s) are certified to provide the goods and services the Offeror intends to subcontract. If the Offeror's Subcontractor(s) are current valid certified City of Austin M/WBE firms, the Offeror shall insert the name(s) of their Subcontractor(s) into the table below and must include the following documents in their sealed Offer:

- Subcontracting/Sub-Consulting Utilization Form (completed and signed)
- Subcontracting/Sub-Consulting Utilization Plan (completed)

- ☐ I intend to use NON-CERTIFIED Subcontractor/Sub-Consultant(s) after performing Good Faith Efforts.

Instructions: Offerors may use Subcontractors that ARE NOT City of Austin certified M/WBE firms ONLY after Offerors have first demonstrated Good Faith Efforts to provide subcontracting opportunities to City of Austin M/WBE firms.

STEP ONE: Contact SMBR for an availability list for the scope(s) of work you wish to subcontract;

STEP TWO: Perform Good Faith Efforts (Check List provided below);

STEP THREE: Offerors shall insert the name(s) of their certified or non-certified Subcontractor(s) into the table below and must include the following documents in their sealed Offer:

- Subcontracting/Sub-Consulting Utilization Form (completed and signed)
- Subcontracting/Sub-Consulting Utilization Plan (completed)
- All required documentation demonstrating the Offeror's performance of Good Faith Efforts (see Check List below)

GOOD FAITH EFFORTS CHECK LIST –

When using NON-CERTIFIED Subcontractor/Sub-consultants(s), ALL of the following **CHECK BOXES MUST** be completed in order to meet and comply with the Good Faith Effort requirements and all documentation must be included in your sealed Offer. Documentation **CANNOT** be added or changed after submission of the bid.

- ☐ **Contact SMBR.** Offerors shall contact SMBR (512-974-7600 or SMBRComplianceDocuments@austintexas.gov) to obtain a list of City of Austin certified M/WBE firms that are certified to provide the goods and services the Offeror intends to subcontract out. (Availability List). Offerors shall document their contact(s) with SMBR in the "SMBR Contact Information" table on the following page.
- ☐ **Contact M/WBE firms.** Offerors shall contact all of the M/WBE firms on the Availability List with a Significant Local Business Presence which is the Austin Metropolitan Statistical Area, to provide information on the proposed goods and services proposed to be subcontracted and give the Subcontractor the opportunity to respond on their interest to bid on the proposed scope of work. When making the contacts, Offerors shall use at least two (2) of the following communication methods: email, fax, US mail or phone. Offerors shall give the contacted M/WBE firms at least seven days to respond with their interest. Offerors shall document all evidence of their contact(s) including: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan**

SOLICITATION NUMBER: GLB0070

SOLICITATION TITLE: Sodium Hypochlorite

- ☐ **Follow up with responding M/WBE firms.** Offeror shall follow up with all M/WBE firms that respond to the Offeror's request. Offerors shall provide written evidence of their contact(s): emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.

- ☐ **Advertise.** Offerors shall place an advertisement of the subcontracting opportunity in a local publication (i.e. newspaper, minority or women organizations, or electronic/social media). Offerors shall include a copy of their advertisement, including the name of the local publication and the date the advertisement was published.

- ☐ **Use a Community Organization.** Offerors shall solicit the services of a community organization(s); minority persons/women contractors'/trade group(s); local, state, and federal minority persons/women business assistance office(s); and other organizations to help solicit M/WBE firms. Offerors shall provide written evidence of their Proof of contact(s) include: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, organization contacted, phone number, email address and contact person.

N/A PVS Minibulk Inc is not using subcontractors for this contract.
MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan

SOLICITATION NUMBER: GLB0070
SOLICITATION TITLE: Sodium Hypochlorite

(Offerors may duplicate this page to add additional Subcontractors as needed)

Subcontractor/Sub-consultant	
City of Austin Certified	<input type="checkbox"/> MBE <input type="checkbox"/> WBE Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Vendor ID Code	
Contact Person	Phone Number:
Additional Contact Info	Fax Number: E-mail:
Amount of Subcontract	\$
List commodity codes & description of services	
Justification for not utilizing a certified MBE/WBE	

Subcontractor/Sub-consultant	
City of Austin Certified	<input type="checkbox"/> MBE <input type="checkbox"/> WBE Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Vendor ID Code	
Contact Person	Phone Number:
Additional Contact Info	Fax Number: E-mail:
Amount of Subcontract	\$
List commodity codes & description of services	
Justification for not utilizing a certified MBE/WBE	

SMBR Contact Information			
SMBR Contact Name	Contact Date	Means of Contact	Reason for Contact
		<input type="checkbox"/> Phone OR <input type="checkbox"/> Email	

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

Having reviewed this plan, I acknowledge that the Offeror ☐ HAS or ☐ HAS NOT complied with these instructions and City Code Chapters 2-9A/B/C/D, as amended.

Reviewing Counselor Date

I have reviewed the completing the Subcontracting/Sub-Consultant Utilization Plan and ☐ Concur ☐ Do Not Concur with the Reviewing Counselor's recommendation.

Director/Assistant Director or Designee Date

AUSTIN WATER UTILITY*******NOTICE OF CHEMICAL DELIVERY*******

CHEMICAL VENDOR NAME: _____

TRUCKING COMPANY NAME: _____

COMPANY CONTACT PHONE: _____ DATE OF THIS NOTICE: _____

TYPE OF CHEMICAL TO BE DELIVERED: _____

DELIVERY INFORMATION:

DESTINATION: _____ TIME DELIVERY LEFT COMPANY: _____

ESTIMATED ARRIVAL TIME: _____

TRUCK DESCRIPTION:

MAKE: _____ MODEL: _____ COLOR: _____

TRUCK (front) LICENSE PLATE #: _____ TANK SECURITY SEAL #: _____

TRUCK / TANKER #: _____ / _____

DRIVER & COMMERCIAL DRIVER'S LICENSE (CDL) INFORMATION:_____
DRIVER NAME

(not necessary at this time)

DRIVER CDL NUMBER & EXPIRATION DATE

DRIVER CONTACT PHONECDL ENDORSEMENT ON LICENSE? YES NO
Circle OneCDL ENDORSEMENT CODE: H or X or N
Circle One

(This section for AWU use only)

Actual arrival time: _____ Is CDL endorsement code appropriate for this vehicle*? YES NO
Circle One

I have verified the information submitted on this form with actual conditions at delivery:

AWU Staff Signature: _____ Printed Name: _____

*Endorsement letters: N = Required for tanker vehicle

H = Required for transporting hazardous materials that require display of placards on truck/trailer

X = Combines N and H; Required for operating tanker vehicles carrying hazardous materials

This form should be retained and submitted with the related payment materials to AWU Accounts Payable.

NOTE: THIS FORM SHALL BE FAXED TO DELIVERY LOCATION SITE SUPERVISOR WHEN DRIVER HAS BEEN DISPATCHED FOR DELIVERY TO AUSTIN WATER UTILITY DELIVERY SITE. PLEASE CALL (512) 972-0310 WITH ANY QUESTIONS OR CONCERNS REGARDING THIS FORM.

{AWU REVISED 09/15/2013ss, Form 2013c}



**ADDENDUM
PURCHASING OFFICE
CITY OF AUSTIN, TEXAS**

Solicitation: IFB 2200 GLB0070

Addendum No: 1

Date of Addendum: 2/9/17

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

- I. **Questions:** The following questions were posed by one or more contractors in writing. Each question (Q) is followed by its answer (A).
1. (Q) Can you provide the Bid Tab from current contract?
(A) The solicitation is taken from two contracts. The following are the links to those two solicitation that have the bids sheets under attachments:
https://www.austintexas.gov/financeonline/vendor_connection/solicitation/solicitation_details.cfm?sid=104234
https://www.austintexas.gov/financeonline/vendor_connection/solicitation/solicitation_details.cfm?sid=103986
 2. (Q) For the remote locations it is stated delivery to be in 100-400 gals every 7 days is this correct?
(A) This is correct.
 3. (Q) Does this same amount apply to the South WWTP? Or is this one to be bulk Delivery?
(A) This Plant will receive in larger bulk deliver.
 4. (Q) Will the city of Austin be awarding the bid to one company for both the smaller deliveries and the FTL deliveries (1,400,000 gals.) to the same provider? Or will they reserve the right to award the bid to two separate providers?
(A) Stated on the Bid Sheet Section 0600, The City intends to award one contract based on overall low cost however reserves the right to make multiple awards based on individual or groups of specific line items, cost, or any criteria or any combination deemed most advantageous to the City.
 5. (Q) Are orders placed at the SAR plant always truckload quantities?
(A) Yes this are
 6. (Q) On page 3 of 11 (A) under supplemental purchase provisions, can we contact the plant and request a site visit to insure delivery conditions?
(A) Yes you may however you need to contact Georgia Billela for appointment time. This is only to see delivery conditions and nothing more.
 7. (Q) Are city personnel required to be present when delivering to remote locations?
(A) Yes

II. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

APPROVED BY:



Georgia Billela, Procurement Specialist III
Purchasing Office, 512-974-2939

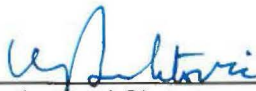
Date

9/9/18

ACKNOWLEDGED BY:

PVS Minibulk, Inc.

Name



Authorized Signature
Milisav Bulatovic/Treasurer

02/13/18

Date

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.



6300 Bridge Point Pkwy
Austin, TX 78730
512-278-8800

February 12, 2018

Re: Sodium Hypochlorite affidavit of compliance - IFB 2200 GLB0070

Dear City of Austin:

As the product manufacturer, we take great pride in supplying the highest quality product in our market. We guarantee that our product will meet or exceed our product specification and adhere to our EPA Registration guidelines, NSF, TCEQ and the City of Austin's Ordinances and regulations.

Should you require any further certifications please contact our corporate office.

Sincerely,

Michael Shelton
FSTI

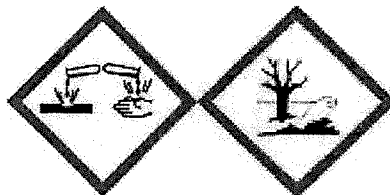


FSTI, Inc
6300 Bridgepoint Pkwy
Suite 1-200
Austin, TX 78653

Signal Word: Danger

Hazard Statements

Causes severe skin burns and eye damage
May cause respiratory tract irritation
Very toxic to aquatic life



Appearance Clear, pale yellow

Physical state Thin liquid

Odor Bleach

Precautionary Statements - Prevention

Wash face, hands and any exposed skin thoroughly after handling.
Wear protective gloves, protective clothing, face protection, and eye protection such as safety glasses.

Precautionary Statements - Response

Immediately call a poison center or doctor.
If swallowed: Rinse mouth. Do NOT induce vomiting.
If on skin (or hair): Take off immediately all contaminated clothing. Rinse skin with water.
Wash contaminated clothing before reuse.
If inhaled: Remove person to fresh air and keep comfortable for breathing.
Specific treatment (see supplemental first aid instructions on this label).
If in eyes: Rinse cautiously with water for several minutes. Remove contact lenses, if present and easy to do. Continue rinsing.

Precautionary Statements - Storage

Store locked up.

Precautionary Statements - Disposal

Dispose of contents in accordance with all applicable federal, state, and local regulations.

Hazards not otherwise classified (HNOC)

Although not expected, heart conditions or chronic respiratory problems such as asthma, chronic bronchitis, or obstructive lung disease may be aggravated by exposure to high concentrations of vapor or mist.

Product contains a strong oxidizer. Always flush drains before and after use.

Unknown Toxicity

Not applicable.

Other information

Very toxic to aquatic life with long lasting effects.

Interactions with Other Chemicals

Reacts with other household chemicals such as toilet bowl cleaners, rust removers, acids, or products containing ammonia to produce hazardous irritating gases, such as chlorine and other chlorinated compounds.

3. COMPOSITION/INFORMATION ON INGREDIENTS

Chemical Name	CAS-No	Weight %	Trade Secret
Sodium hypochlorite	7681-52-9	7-15	N/A



4. FIRST AID MEASURES

First aid measures

General Advice	Call a poison control center or doctor immediately for treatment advice. Show this safety data sheet to the doctor in attendance.
Eye Contact	Hold eye open and rinse slowly and gently with water for 15 - 20 minutes. Remove contact lenses, if present, after the first 5 minutes, then continue rinsing eye. Call a poison control center or doctor for treatment advice.
Skin Contact	Take off contaminated clothing. Rinse skin immediately with plenty of water for 15-20 minutes. Call a poison control center or doctor for treatment advice.
Inhalation	Move to fresh air. If breathing is affected, call a doctor.
Ingestion	Have person sip a glassful of water if able to swallow. Do not induce vomiting unless told to do so by a poison control center or doctor. Do not give anything by mouth to an unconscious person. Call a poison control center or doctor immediately for treatment advice.
Protection of First-aiders	Avoid contact with skin, eyes, and clothing. Use personal protective equipment as required. Wear personal protective clothing (see section 8).

Most important symptoms and effects, both acute and delayed

Most Important Symptoms and Effects	Burning of eyes and skin.
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Indication of any immediate medical attention and special treatment needed

Notes to Physician	Treat symptomatically. Probable mucosal damage may contraindicate the use of gastric lavage.
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5. FIRE-FIGHTING MEASURES

Suitable Extinguishing Media

Use extinguishing measures that are appropriate to local circumstances and the surrounding environment.

Unsuitable Extinguishing Media

CAUTION: Use of water spray when fighting fire may be inefficient.

Specific Hazards Arising from the Chemical

This product causes burns to eyes, skin, and mucous membranes. Thermal decomposition can release sodium chlorate and irritating gases and vapors.

Explosion Data

Sensitivity to Mechanical Impact None.

Sensitivity to Static Discharge None.

Protective equipment and precautions for firefighters

As in any fire, wear self-contained breathing apparatus pressure-demand, MSHA/NIOSH (approved or equivalent) and full protective gear.



FSTI, Inc
6300 Bridgepoint Pkwy
Suite 1-200
Austin, TX 78653

6. ACCIDENTAL RELEASE MEASURES

Personal precautions, protective equipment and emergency procedures

Personal Precautions	Avoid contact with eyes, skin, and clothing. Ensure adequate ventilation. Use personal protective equipment as required. For spills of multiple products, responders should evaluate the MSDSs of the products for incompatibility with sodium hypochlorite. Breathing protection should be worn in enclosed and/or poorly-ventilated areas until hazard assessment is complete.
Other Information	Refer to protective measures listed in Sections 7 and 8.

Environmental precautions

Environmental Precautions	This product is toxic to fish, aquatic invertebrates, oysters, and shrimp. Do not allow product to enter storm drains, lakes, or streams. See Section 12 for ecological Information.
---------------------------	--

Methods and material for containment and cleaning up

Methods for Containment	Prevent further leakage or spillage if safe to do so.
Methods for Cleaning Up	Absorb and containerize. Wash residual down to sanitary sewer. Contact the sanitary treatment facility in advance to assure ability to process washed-down material.

7. HANDLING AND STORAGE

Precautions for safe handling

Handling	Handle in accordance with good industrial hygiene and safety practice. Avoid contact with skin, eyes, and clothing. Do not eat, drink, or smoke when using this product.
----------	--

Conditions for safe storage, including any incompatibilities

Storage	Store away from children. Reclose cap tightly after each use. Store this product upright in a cool, dry area, away from direct sunlight and heat to avoid deterioration. Do not contaminate food or feed by storage of this product.
Incompatible Products	Toilet bowl cleaners, rust removers, acids, and products containing ammonia.

8. EXPOSURE CONTROLS/PERSONAL PROTECTION

Control parameters

Exposure Guidelines

Chemical Name	ACGIH TLV	OSHA PEL	NIOSH IDLH
Sodium hypochlorite 7681-52-9	None	None	None

ACGIH TLV: American Conference of Governmental Industrial Hygienists - Threshold Limit Value. OSHA PEL: Occupational Safety and Health Administration - Permissible Exposure Limits. NIOSH IDLH: Immediately Dangerous to Life or Health.



Appropriate engineering controls

Engineering Measures	Showers Eyewash stations Ventilation systems
----------------------	--

Individual protection measures, such as personal protective equipment

Eye/Face Protection	If splashes are likely to occur: Wear safety glasses with side shields (or goggles) or face shield.
Skin and Body Protection	Wear rubber or neoprene gloves and protective clothing such as long-sleeved shirt.
Respiratory Protection	If irritation is experienced, NIOSH/MSHA approved respiratory protection should be worn. Positive-pressure supplied air respirators may be required for high airborne contaminant concentrations. Respiratory protection must be provided in accordance with current local regulations.
Hygiene Measures	Handle in accordance with good industrial hygiene and safety practice. Wash hands after direct contact. Do not wear product-contaminated clothing for prolonged periods. Remove and wash contaminated clothing before re-use. Do not eat, drink, or smoke when using this product.

9. PHYSICAL AND CHEMICAL PROPERTIES

Physical and Chemical Properties

Physical State	Thin liquid	Odor	Bleach
Appearance	Clear	Odor Threshold	No information available
Color	Pale yellow		

<u>Property</u>	<u>Values</u>	<u>Remarks/ Method</u>
pH	~12	None known
Melting/freezing point	No data available	None known
Boiling point / boiling range	No data available	None known
Flash Point	Not flammable	None known
Evaporation rate	No data available	None known
Flammability (solid, gas)	No data available	None known
Flammability Limits in Air		
Upper flammability limit	No data available	None known
Lower flammability limit	No data available	None known
Vapor pressure	No data available	None known
Vapor density	No data available	None known
Specific Gravity	~1.1	None known
Water Solubility	Soluble	None known
Solubility in other solvents	No data available	None known
Partition coefficient: n-octanol/water	No data available	None known
Autoignition temperature	No data available	None known
Decomposition temperature	No data available	None known
Kinematic viscosity	No data available	None known
Dynamic viscosity	No data available	None known
Explosive Properties	Not explosive	
Oxidizing Properties	No data available	

Other Information

Softening Point	No data available
VOC Content (%)	No data available
Particle Size	No data available
Particle Size Distribution	No data available



10. STABILITY AND REACTIVITY

Reactivity

Reacts with other household chemicals such as toilet bowl cleaners, rust removers, acids, or products containing ammonia to produce hazardous irritating gases, such as chlorine and other chlorinated compounds.

Chemical stability

Stable under recommended storage conditions.

Possibility of Hazardous Reactions

None under normal processing.

Conditions to avoid

None known based on information supplied.

Incompatible materials

Toilet bowl cleaners, rust removers, acids, and products containing ammonia.

Hazardous Decomposition Products

None known based on information supplied.

11. TOXICOLOGICAL INFORMATION

Information on likely routes of exposure

Product Information

Inhalation	Exposure to vapor or mist may irritate respiratory tract and cause coughing. Inhalation of high concentrations may cause pulmonary edema.
Eye Contact	Corrosive. May cause severe damage to eyes.
Skin Contact	May cause severe irritation to skin. Prolonged contact may cause burns to skin.
Ingestion	Ingestion may cause burns to gastrointestinal tract and respiratory tract, nausea, vomiting, and diarrhea.

Chemical Name	LD50 Oral	LD50 Dermal	LC50 Inhalation
Sodium hypochlorite 7681-52-9	8200 mg/kg (Rat)	>10000 mg/kg (Rabbit)	-

Information on toxicological effects

Symptoms	May cause redness and tearing of the eyes. May cause burns to eyes. May cause redness or burns to skin. Inhalation may cause coughing.
----------	--

Delayed and immediate effects as well as chronic effects from short and long-term exposure

Sensitization	No information available.
Mutagenic Effects	No information available.
Carcinogenicity	The table below indicates whether each agency has listed any ingredient as a carcinogen.

Chemical Name	ACGIH	IARC	NTP	OSHA
Sodium hypochlorite 7681-52-9	-	Group 3	-	-

IARC (International Agency for Research on Cancer)
Group 3 - Not Classifiable as to Carcinogenicity in Humans



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Suite 1-200
Austin, TX 78653

Reproductive Toxicity	No information available.
STOT - single exposure	No information available.
STOT - repeated exposure	No information available.
Chronic Toxicity	Carcinogenic potential is unknown.
Target Organ Effects	Respiratory system, eyes, skin, gastrointestinal tract (GI).
Aspiration Hazard	No information available.

Numerical measures of toxicity - Product Information

The following values are calculated based on chapter 3.1 of the GHS document

ATEmix (oral)
54 g/kg
ATEmix (inhalation-dust/mist)
58 mg/L

12. ECOLOGICAL INFORMATION

Ecotoxicity

Very toxic to aquatic life with long lasting effects.

This product is toxic to fish, aquatic invertebrates, oysters, and shrimp. Do not allow product to enter storm drains, lakes, or streams.

Persistence and Degradability

No information available.

Bioaccumulation

No information available.

Other adverse effects

No information available.

13. DISPOSAL CONSIDERATIONS

Disposal methods

Dispose of in accordance with all applicable federal, state, and local regulations. Do not contaminate food or feed by disposal of this product.

Contaminated Packaging

Do not reuse empty containers. Dispose of in accordance with all applicable federal, state, and local regulations.

14. TRANSPORT INFORMATION

DOT

UN-No
Proper Shipping Name
Hazard Class
Label
Packing Group

Inside containers or single containers exceeding 1.3 gallons
Sodium hypochlorite solutions
8, UN1791, Corrosive 8
III



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Austin, TX 78653

IDG

UN-No	UN3082
Proper Shipping Name	ENVIRONMENTALLY HAZARDOUS SUBSTANCE, LIQUID, N.O.S.
Hazard Class	9
Packing Group	III
Description	UN3082, ENVIRONMENTALLY HAZARDOUS SUBSTANCE, LIQUID, N.O.S. (SODIUM HYPOCHLORITE), 9, III, MARINE POLLUTANT

ICAO

UN-No	UN3082
Proper Shipping Name	ENVIRONMENTALLY HAZARDOUS SUBSTANCE, LIQUID, N.O.S.
Hazard Class	9
Packing Group	III
Description	UN3082, ENVIRONMENTALLY HAZARDOUS SUBSTANCE, LIQUID, N.O.S. (SODIUM HYPOCHLORITE), 9, III

IATA

UN-No	UN3082
Proper Shipping Name	ENVIRONMENTALLY HAZARDOUS SUBSTANCE, LIQUID, N.O.S.
Hazard Class	9
Packing Group	III
Description	UN3082, ENVIRONMENTALLY HAZARDOUS SUBSTANCE, LIQUID, N.O.S. (SODIUM HYPOCHLORITE), 9, III

IMDG/IMO

UN-No	UN3082
Proper Shipping Name	ENVIRONMENTALLY HAZARDOUS SUBSTANCE, LIQUID, N.O.S.
Hazard Class	9
Packing Group	III
EmS No.	F-A, S-F
Marine Pollutant	Product is a marine pollutant according to the criteria set by IMDG/IMO
Description	UN3082, ENVIRONMENTALLY HAZARDOUS SUBSTANCE, LIQUID, N.O.S. (SODIUM HYPOCHLORITE), 9, III, MARINE POLLUTANT

15. REGULATORY INFORMATION

Chemical Inventories

TSCA	All components of this product are either on the TSCA 8(b) Inventory or otherwise exempt from listing.
DSL/NDSL	All components are on the DSL or NDSL.

TSCA - United States Toxic Substances Control Act Section 8(b) Inventory
DSL/NDSL - Canadian Domestic Substances List/Non-Domestic Substances List

U.S. Federal Regulations

SARA 313

Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). This product does not contain any chemicals which are subject to the reporting requirements of the Act and Title 40 of the Code of Federal Regulations, Part 372

SARA 311/312 Hazard Categories

Acute Health Hazard	Yes
Chronic Health Hazard	No
Fire Hazard	No
Sudden Release of Pressure Hazard	No
Reactive Hazard	No



FSTI, Inc
6300 Bridgepoint Pkwy
Suite 1-200
Austin, TX 78653

Clean Water Act

This product contains the following substances which are regulated pollutants pursuant to the Clean Water Act (40 CFR 122.21 and 40 CFR 122.42)

Chemical Name	CWA - Reportable Quantities	CWA - Toxic Pollutants	CWA - Priority Pollutants	CWA - Hazardous Substances
Sodium hypochlorite 7681-52-9	100 lb			X

CERCLA

This material, as supplied, contains one or more substances regulated as a hazardous substance under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) (40 CFR 302)

Chemical Name	Hazardous Substances RQs	Extremely Hazardous Substances RQs	RQ
Sodium hypochlorite 7681-52-9	100 lb	-	RQ 100 lb final RQ RQ 45.4 kg final RQ

EPA Statement

This chemical is a pesticide product registered by the Environmental Protection Agency and is subject to certain labeling requirements under federal pesticide law. These requirements differ from the classification criteria and hazard information required for safety data sheets and for workplace labels of non-pesticide chemicals. Following is the hazard information as required on the pesticide label:

DANGER: CORROSIVE. Causes irreversible eye damage and skin burns. Harmful if swallowed. Do not get in eyes, on skin, or on clothing. Wear protective eyewear and rubber gloves when handling this product. Wash thoroughly with soap and water after handling and before eating, drinking, chewing gum, using tobacco, or using the restroom. Avoid breathing vapors and use only in a well-ventilated area.

US State Regulations

California Proposition 65

This product does not contain any Proposition 65 chemicals.

U.S. State Right-to-Know Regulations

Chemical Name	New Jersey	Massachusetts	Pennsylvania	Rhode Island	Illinois
Sodium hypochlorite 7681-52-9	X	X	X	X	
Sodium chlorate 7775-09-9	X	X	X		

International Regulations

Canada

WHMIS Hazard Class

E - Corrosive material





FSTI, Inc
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Suite 1-200
Austin, TX 78653

NEPA	Health Hazard	3	Flammability	0	Instability	0	Physical and Chemical Hazards	-
HMIS	Health Hazard	3	Flammability	0	Physical Hazard	0	Personal Protection	B

This SDS is in compliance with GHS Regulations

Prepared for:

FSTI, Inc
6300 Bridgepoint Pkwy Suite 1-200 Austin, TX, USA
78653
Tel. (888) 290-7548
Please direct all enquiries to FSTI.

Prepared by:

Mandava Associates, LLC
1-972-265-7924
<http://www.mandava.com>

Revision Date 05/27/2015

Revision Note NEW

General Disclaimer

The information provided in this Safety Data Sheet is correct to the best of our knowledge, information and belief at the date of its publication. The information given is designed only as a guidance for safe handling, use, processing, storage, transportation, disposal, and release and is not to be considered a warranty or quality specification. The information relates only to the specific material designated and may not be valid for such material used in combination with any other materials or in any process, unless specified in the text.

End of Safety Data Sheet



FSTI CHEMICAL AND LOGISTICS

CERTIFICATE OF ANALYSIS

Greenville, TX

LN-001-2

Sodium Hypochlorite, 12.5% (by Weight)

Product Specifications	Test Result	Specification Range	
Sodium Hypochlorite (NaOCl), WT%	12.99	12.0	13.0
Available Chlorine (Cl ₂), WT %	12.37	11.43	12.38
Sodium Hydroxide (NaOH), WT%	0.21	0.2	0.6
Specific Gravity	1.1973	1.18	1.22
Iron, ppm	0.00	<0.5	
Copper, ppm	<0.02	<0.5	
Nickel, ppm	<0.02	<0.5	
Color/ Clarity	PASS	Clear / Greenish Yellow	

*Tests are per ASTM D2022-89(2008)

COMPLIES WITH NSF 60

Analysis Date

01/14/2018

Lot Number

6202A01142018-01

Analyst

Ramesh.

Board Operator Signature

Lab Analyst Signature

This information relates only to the specific material designated and may not be valid for such material used in combination with any other materials or in any process. Such information is, to the best of our knowledge (and belief, accurate, and reliable as to the data compiled. However, no presentation, warranty, or guarantee is made as to its accuracy, reliability, or completeness. It is the user's responsibility to verify information as to the suitability and completeness of such information for the particular use. We do not accept liability for any loss or damage that may occur from the use of this information nor do we offer any warranty against patent infringement.

6300 Bridgepoint Parkway Suite 1-200
Austin, TX 78730 USA

512 278 8800 (P) / 512 278 9355 (F)



City of Austin

Purchasing Office, Financial Services Department

P.O. Box 1088, Austin, TX 78767

April 27, 2018

FSTI, Inc.
Michael Shelton
Sales & Category Manager
6300 Bridgepoint Pkwy Ste. 1-200
Austin, TX 78730
mshelton@fstichem.com

Dear Mr. Shelton:

The Austin City Council approved the execution of a contract with your company for Sodium Hypochlorite in accordance with the referenced solicitation.

Responsible Department:	Austin Water
Department Contact Person:	Lydia Torres, CTCM
Department Contact Email Address:	Lydia.Torres@austintexas.gov
Department Contact Telephone:	512-972-0329
Project Name:	Sodium Hypochlorite
Contractor Name:	FSTI Inc.
Contract Number:	MA 2200 GA180000034
Contract Period:	4/27/18 – 4/26/2020
Dollar Amount	\$1,953,500 each and combined
Extension Options:	3 x 12 month options (\$976,750 each and combined per option)
Requisition Number:	RQM 17100600017
Solicitation Type & Number:	IFB 2200 GLB0070
Agenda Item Number:	22
Council Approval Date:	4/26/18

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,

Georgia Billela
Procurement Specialist III
City of Austin
Purchasing Office

cc: Lydia Torres
Andy Ramirez
Joaquin Ordóñez

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
AND**

**FSTI INC. ("Contractor")
for**

**Sodium Hypochlorite
MA 2200 GA180000034**

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

This Contract is between FSTI Inc. having offices at Austin, TX and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number IFB 2200 GLB0070.

1.1 This Contract is composed of the following documents:

1.1.1 This document

1.1.2 The City's Solicitation, Invitation for Bid (IFB), 2200 GLB0070 including all documents incorporated by reference

1.1.3 FSTI Inc. Offer, dated 2/9/18

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

1.2.1 This document

1.2.2 The City's Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference

1.2.3 The Contractor's Offer as referenced in Section 1.1.3

1.3 Term of Contract. The Contract will be in effect for an initial term of twenty-four (24) month and may be extended thereafter for up to three (3) twelve (12) month extension option(s), subject to the approval of the Contractor and the City Purchasing Officer or his designee. See the Term of Contract provision in Section 0400 for additional Contract requirements.

1.4 Compensation. The Contractor shall be paid a total Not-to-Exceed amount of \$1,953,500 each and combined for the initial Contract term and \$976,750 for each extension option as indicated in the Bid Sheet, IFB Section 0600. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.

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

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

WST

1.6.1 FSTI Inc. awarded line 2 @ \$0.64 per gallon

1.6.2 PVS Technologies Inc. dba PVS Minibulk Inc. awarded line 1 @ 0.9876 per gallon

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

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

FSTI Inc.

W. Scott Trussell
Printed Name of Authorized Person

[Signature]
Signature

Chief Operating Officer
Title:

April 26, 2018
Date:

CITY OF AUSTIN

Georgia Billela
Printed Name of Authorized Person

[Signature]
Signature

Procurement Specialist III
Title:

4/27/18
Date:

CITY OF AUSTIN

Matthew Duce
Printed Name of Authorized Person

[Signature]
Signature

Procurement Supervisor
Title:

4-27-18
Date:



CITY OF AUSTIN, TEXAS
Purchasing Office
INVITATION FOR BID (IFB)
OFFER SHEET

SOLICITATION NO: 2200 GLB0070

COMMODITY/SERVICE DESCRIPTION: Sodium Hypochlorite

DATE ISSUED: January 29, 2018

REQUISITION NO.: 17100600017

BID DUE PRIOR TO: Thursday, February 15, 2018 @ 2:00 PM

COMMODITY CODE: 2450580
**FOR CONTRACTUAL AND TECHNICAL
ISSUES CONTACT THE FOLLOWING
AUTHORIZED CONTACT PERSON:**

BID OPENING TIME AND DATE: February 15, 2018 @ 3:00 PM

Georgia Billela

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET
RM 308, AUSTIN, TEXAS 78701

Procurement Specialist III

Phone: (512) 974-2939

E-Mail: georgia.billela@austintexas.gov

LIVE BID OPENING ONLINE:

Sandy Wirtanen

For information on how to attend the Bid Opening online, please select
this link:

Procurement Specialist IV

Phone: (512) 974-7711

E-Mail: sandy.wirtanen@austintexas.gov

<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 # GLB0070	Purchasing Office-Response Enclosed for Solicitation # GLB0070
P.O. Box 1088	124 W 8 th 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.

The Vendor agrees, if this Offer is accepted within 120 calendar days after the Due Date, to fully comply in strict accordance with the Solicitation, specifications and provisions attached thereto for the amounts shown on the accompanying Offer.

SUBMIT 1 ORIGINAL AND 1 ELECTRONIC THUMB/FLASH 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.

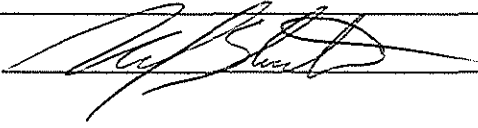
SECTION NO.	TITLE	PAGES
0100	STANDARD PURCHASE DEFINITIONS	*
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0300	STANDARD PURCHASE TERMS AND CONDITIONS	*
0400	SUPPLEMENTAL PURCHASE PROVISIONS	11
0500	SPECIFICATION	3
ATT	ATTACHMENT A – CHEMICAL DELIVERY NOTICE	1
0600	BID SHEET – Must be completed and returned with Offer	2
0605	LOCAL BUSINESS PRESENCE IDENTIFICATION FORM – Complete & return	2
0700	REFERENCE SHEET – Complete and return if required	2
0800	NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION–Complete and return	2
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	*
0810	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION	*
0835	NONRESIDENT BIDDER PROVISIONS – Complete & return	1
0900	SUBCONTRACTING/SUB-CONSULTING UTILIZATION FORM – Complete & return	1
0905	SUBCONTRACTING/SUB-CONSULTING UTILIZATION PLAN – Complete and return if applicable	3

*** 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

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 8th 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.

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: FSTI, Inc
Company Address: 6300 Bridgepoint Pkwy Ste 1-700
City, State, Zip: Austin, TX 78730
Federal Tax ID No.
Printed Name of Officer or Authorized Representative: Michael Shelton
Title: Sales & Category Manager
Signature of Officer or Authorized Representative: 
Date: 2/9/18
Email Address: mshelton@fstichen.com
Phone Number: 737-703-8254

*** Completed Bid Sheet, section 0600 must be submitted with this signed Offer Sheet to be considered for award**

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

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

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

10. WORKFORCE

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

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

12. INVOICES:

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

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13. PAYMENT:

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

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

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

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

15. FINAL PAYMENT AND CLOSE-OUT:

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

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

17. AUDITS and RECORDS:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. Records Retention:
 - i. 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.
 - ii. All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City
 - iii. The Contractor shall retain all Records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.
- C. The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.

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18. SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
 - i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. WARRANTY-PRICE:

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.

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20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.
21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
- A. Recycled Deliverables shall be clearly identified as such.
 - B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
 - E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be

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required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

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30. DELAYS:

- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. INDEMNITY:

- A. Definitions:
 - i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
 - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
 - ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.
- B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

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

- A. General Requirements.
 - i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
 - ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the

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City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

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

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

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the

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Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

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

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39. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
40. **NO CONTINGENT FEES**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
41. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
42. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
43. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
44. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
45. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
46. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
47. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been 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.

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48. DISPUTE RESOLUTION:

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

49. JURISDICTION AND VENUE: The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

50. INVALIDITY: The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

51. HOLIDAYS: The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11

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Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

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

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

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

54. **EQUAL OPPORTUNITY**

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

B. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

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

A. Definitions. As used in this paragraph –

i. "Component" means an article, material, or supply incorporated directly into an end product.

ii. "Cost of components" means -

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

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

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

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

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

10. WORKFORCE

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

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

12. INVOICES:

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

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13. PAYMENT:

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

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

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

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

15. FINAL PAYMENT AND CLOSE-OUT:

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

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

17. AUDITS and RECORDS:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. Records Retention:
 - i. 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.
 - ii. All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City
 - iii. The Contractor shall retain all Records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.
- C. The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.

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18. SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
 - i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. WARRANTY-PRICE:

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.

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20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.
21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
- A. Recycled Deliverables shall be clearly identified as such.
 - B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
 - E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be

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required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

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30. DELAYS:

- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. INDEMNITY:

- A. Definitions:
 - i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
 - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
 - ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.
- B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

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

- A. General Requirements.
 - i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
 - ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the

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City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

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

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

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the

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Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

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

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39. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
40. **NO CONTINGENT FEES**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
41. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
42. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
43. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
44. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
45. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
46. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
47. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been 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.

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48. DISPUTE RESOLUTION:

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

49. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

50. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

51. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11

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Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

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

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

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

54. **EQUAL OPPORTUNITY**

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

B. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

55. **INTERESTED PARTIES DISCLOSURE**

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

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

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

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

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The following Supplemental Purchasing Provisions apply to this solicitation:

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

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by email to georgia.billela@austintexas.gov no later than close of business five (5) business days before the bid due date.

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

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

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

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

OR

PURInsuranceCompliance@austintexas.gov

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:

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- (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Contractor/Subcontracted Work.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.
 - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
- iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
- (1) The policy shall include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
- iv. **Hazardous Materials Insurance:** For Work which involves hazardous materials CONTRACTOR or Subcontractor responsible for the Work shall comply with the following insurance requirements in addition to those specified above:
- (1) Provide a pollution endorsement to the Commercial General Liability policy with minimum bodily injury and property damage limits of \$1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of \$1,000,000. This policy shall not exclude hazardous materials or pollution, and shall provide "occurrence" coverage without a sunset clause.
 - a. The policy shall provide 30 day Notice of Cancellation
 - b. Waiver of Subrogation endorsements in favor of OWNER.
 - (2) CONTRACTOR or Subcontractor responsible for transporting any hazardous materials shall provide pollution coverage. Federal law requires interstate or intrastate transporters of hazardous materials to provide an MCS 90 endorsement with a \$5,000,000 limit when transporting hazardous materials in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. Interstate transporters of hazardous materials in non-bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more must provide an MCS 90 endorsement with a \$1,000,000 limit. The terms "conveyance" and "bulk" are defined by Title 49 CFR 171.8. All other transporters of hazardous material shall provide either an MCS 90 endorsement with minimum limits of \$1,000,000 or an endorsement to their Commercial General Liability Insurance policy which provides coverage for bodily injury and property damage arising out of the transportation of hazardous materials. The endorsement shall, at a minimum, provide a \$1,000,000 limit of liability and cover events arising from fire, wind, hail, lightning, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.

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

3. TERM OF CONTRACT:

- A. The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of twenty-four (24) months. The Contract may be extended beyond the initial term for up to three (3) additional twelve (12) month periods at the City's sole option. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
- B. Upon expiration of the initial term or any 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 for the City to re-solicit and/or complete the deliverables due under this Contract. Any hold over period will not exceed 120 calendar days unless mutually agreed on by both parties 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.

4. **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.

5. DELIVERY REQUIREMENTS FOR ALL FACILITIES:

- A. Contractors shall be responsible for contacting the Plant(s) and requesting a site visit to ensure delivery conditions are acceptable PRIOR to submitting a bid. Otherwise, the City will assume that the delivery conditions are acceptable to the Contractor submitting a bid.
- B. The City has had issues with Contractors changing trucking companies and the new truck drivers are not aware of our specifications. Therefore, if the Contractor changes the trucking company to one that is different than the one listed on the bid sheet, the Contractor must notify the Plant Supervisor or designee, in writing, at least one week prior to any deliveries made by the new company.
- C. The Contractor shall be fully responsible for cleanup of any spillage or leakage and repairing any property damage occurring during transportation and/or on the Plant site due to defective pumping and/or unloading equipment and/or negligence of the driver. Cleanups/repairs shall be completed before the driver leaves the facility, if possible. If an immediate cleanup/repair is not possible, the Contractor shall then complete the cleanup/repairs within five (5) business days.
- D. If a delivery needs to be rescheduled, the Contractor shall notify the Plant Supervisor or designee in writing no later than close of business the day before originally scheduled delivery date.

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- E. Delivery drivers must be able to speak fluent English. This is vital since, prior to accepting a load, a sample will be taken and testing will take place to ensure compliance with the City's specifications. Otherwise, the load may be rejected by the Plant Supervisor or designee.
- F. The truck driver must check in at the administrative building upon arrival. The driver must show his driver's license. The driver shall not offload the product unless the Plant Supervisor or designee accompanies the driver to the area where the product will be unloaded.
- G. The Contractor shall accept orders that will be placed by phone/fax/email by the Plant Supervisor or designee, on an "as needed" basis. The Contractor shall confirm the quantity to be shipped on orders within two (2) hours of notification by phone from the Plant Supervisor or designee.
- H. The Contractor shall confirm delivery date within two business days of receiving the order request. No partial shipment or backorders shall be allowed.
- I. The Contractor shall obtain sign-off on the Chemical Delivery Notice on every delivery see Attachment A. A Chemical Delivery Notice shall be submitted to the Plant Supervisor or designee, a minimum four (4) hours prior to delivery. "Estimated Arrival Time" on the Chemical Delivery Notice should be completed with an estimate not exceeding a two-hour window.
- J. The Sodium Hypochlorite will be purchased on a volume (gallons) basis. The Contractor shall furnish weight certificates from the State of Texas certified scales in the Austin area. An individual certified scale receipt indicating the date, the tare, and gross weight shall accompany each delivered load. A Safety Data Sheet (SDS) shall also be provided with each delivered load. Failure to provide these documents on or before each delivery may constitute grounds for termination of the contract.
- K. The City reserves the right to collect a sample and perform a test prior to the offloading the delivery. If the test fails, the Plant Supervisor or designee will decide as to whether the truck will be allowed to unload or be rejected.
- L. Delivery shall be made Monday thru Friday (except on City observed holidays) between the hours of 7:30 a.m. and 2:00 p.m. Central Time unless location placing the order has set a different day and time for the order. If the Contractor makes a delivery on any date/time other than the scheduled delivery date/time, the City will not be charged demurrage for any delays encountered in unloading the truck. The Plant Supervisor or designee will be present during all deliveries. The delivery driver shall remain with the truck during the unloading process.
- M. If a truck arrives to deliver on a Saturday, Sunday, holiday, or after 2:00 p.m. Central Time (City regular work day) without the prior approval from the Plant Supervisor or designee, the City will charge the Contractor any and all overtime and call back expenses for unloading. Otherwise, the Contractor or the City can decide that the truck will not be unloaded until normal City working hours.
- N. **The Contractor shall complete by 2:00 p.m.** Central Time any transferring to the storage tank without demurrage of additional truck standing time charges. Should a delivery be completed after 2:00 pm Central Time, the Contractor shall be responsible for all associated costs, including any overtime required for City employees working outside of their normal business hours to accept the delivery.
- O. The Contractor shall allow a minimum two (2) hour time requirement for transferring the product from the delivery truck into the City's tank without demurrage of additional truck standing time charges.

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- P. Inlet fittings provided by the City are:
- For both Remote and SAR Facilities – 2" cam-lock PVC inlet fitting
- Q. The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the description of each item, quantity, and unit price.
- R. Unless requested by the Plant Supervisor or designee, deliveries shall not be made on City-recognized legal holidays (see paragraph 51 in Section 0300).
- S. The Contractor and any subcontractors shall wear the necessary Personal Protective Equipment (PPE) while on City property. PPE required will vary depending on the chemical being delivered, City procedure, and construction activity on site; PPE may include long pants, long-sleeved shirt, work boots with safety toe, safety glasses, reflective vest, hard hat, and any PPE required as is appropriate for the chemical being delivered. PPE shall be provided at no additional expense to the City.
- T. The Contractor may be required to deliver on holidays and weekends, as needed. Orders shall be made in full truckloads only. Deliveries will not be accepted at other times unless scheduled and approved by the Plant Supervisor or designee.
- U. Contractors shall note that the plants are not serviced by rail. Delivery shall be made in bulk trucks. Trucks shall be fully equipped with the correct unloading equipment, hoses and fittings to transfer the product.
- V. The plant inlets for the product storage tanks are located at elevations of up to 4 feet above grade. The delivery trucks shall be equipped with a minimum 40-foot hose, the proper fittings to attach to the City's inlets, and pump or pneumatic delivery system capable of transferring the product from the truck to the storage tanks, without the use of City resources. If air is used to transfer the product from the truck to the City's tank, the truck shall have a self-contained air supply and a functioning regulator capable of regulating the air pressure to a minimum of 14 psi. If a pump is used to transfer the product from the truck to the City's tank, the Contractor shall ensure the pump and associated piping/appurtenances are clean and free of dirt, debris, or other chemicals. The Contractor may connect his own set of adapters to all of the City's inlets (during the contract period) which will be standard to all of the truck couplers.
- W. In an emergency, the City may require partial deliveries from a single truckload to be made at more than one location. The City will pay a reasonable additional standard freight charge for split deliveries made at the request of the City.

6. DELIVERY REQUIREMENTS FOR REMOTE FACILITIES:

- A. The Contractor shall deliver on a 7-calendar day cycle, including weekends and Holidays for approximately 100-400 gallons per order for a total of approximately 24,000 gallons per year during contract period.
- B. Orders shall be made in full truckloads only. Deliveries will not be accepted at other times unless scheduled and approved by the Plant Supervisor or designee.
- C. The Contractor shall top off all bleach tanks a minimum of 1 time every 7 calendar days, including Holidays or as requested by the Plant Supervisor or designee.

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D. Remote Facilities:

Ellery Studivant, Division Manager 512-972-0610 ellery.studivant@austintexas.gov Walnut Creek WWTP 7113 FM 969 Austin, TX 78724		
Locations For Delivery	Tank Size (gallons)	Number of Tanks
Dessau WWTP 1601 Fish Lane Pflugerville, TX 78660	500	1
Harris Branch WWTP 11800 A. Lansdowne Rd. Austin, TX 78653	1,500	1
Balcones Water Reclamation Plant 12007 Spicewood Parkway Austin, TX 78651	500	1
River Place WWTP 8825 Big View Dr. Austin, TX 78730	500	1

7. DELIVERY REQUIREMENTS FOR SOUTH AUSTIN REGIONAL WWTP:

- A. Delivery is to be made within 5 calendar days after the order is placed, including weekends and Holidays. The Contractor shall accept orders by phone/fax/email, on an "as needed" basis no partial shipment or backorder shall be allowed. The Contractor shall deliver to these locations on an as needed basis with a minimum of 24-hours notification. The order shall specify the amount of chemical up to a maximum of 4,800 gallons per delivery per order for a total of approximately 1,400,000 gallons per year during a contract period.

Richard O'Donnell, Plant Supervisor 512-972-0614 richard.odonnell@austintexas.gov South Austin Regional WWTP 1017 Fallwell Lane Del Valle, TX 78617		
Locations For Delivery	Tank Size (gallons)	Number of Tanks
South Austin Regional WWTP 1017 Fallwell Lane Del Valle, TX 78617	8,700	4
	1,500	2
	275	10

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8. 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 Contractor. In addition, the date delivery was made and location of delivery shall be included in the Invoice.
- B. Invoices shall include a completed and signed Chemical Delivery Notice and certified scale receipt for each delivery. The City will pay based on gallons of liquid Sodium Hypochlorite with a minimum 12.5% of available chlorine by weight, as stated in the certificate of analysis received with each load. The City will spot check loads and if there is a discrepancy between the City's results and the certificate of analysis, the City's result will be the one used for payment. If the Contractor disagree, a third party lab will be retained to run the sample. If the result is closer to the City's result, the Contractor will pay for the analysis. If the result is closer to the Contractor's result, the City will pay.
- C. Invoices shall be mailed (emailed invoices will *not* be accepted) within five (5) calendar days after each delivery to the address where the delivery was made:

	Remote Facilities:		
Municipality	City of Austin		
Department	Austin Water, Remote Facilities		
Attn:	Ellery Studivant, Division Manager		
Address	7113 FM 969		
City, State Zip Code	Austin, TX 78724		

	South Austin Regional WWTP		
Municipality	City of Austin		
Department	Austin Water, South Austin Regional WWTP		
Attn:	Richard O'Donnell, Plant Supervisor		
Address	1017 Fallwell Ln.		
City, State Zip Code	Austin, TX 78617		

- D. Invoices shall include, but are not limited to the following:
- Contractor's name, on a professionally pre-printed, sequentially numbered form
 - Contractor's address and phone number
 - City's contract number/purchase order number
 - Date of each delivery
 - Location of each delivery
 - Itemized description of service and pricing for each delivery
 - Chemical Delivery Notice

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

9. HAZARDOUS MATERIALS:

- A. If this Solicitation involves hazardous materials, the Offeror shall furnish with the Offer Safety Data Sheets (SDS), (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 SDS as part of the Offer may subject the Offer to disqualification from consideration for award.
- C. The SDS, instructions and information required in paragraph "A" must be included with each shipment under the contract.

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. WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):

- A. Access to the Austin Water Department facility by the Contractor, all subcontractors and their employees will be strictly controlled at all times by the City. The Contractor shall submit a complete list of all persons requiring access to the Austin Water facility at least thirty (30) days in advance of their need for access. The City reserves the right to deny access to any Contractor personnel for reasonable cause. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor's submittal.

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- B. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the contract, the Contractor shall so notify the City's Contract Manager, in writing, within ten (10) days of the receipt of notification of denial.
- C. Contractor personnel/driver will be required to check in at gate driver must provide a State of Texas issued picture ID to the Plant staff, no exceptions, when entering or leaving the Austin Water facility. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule. Security badges may not be removed from the premises.
- D. The Contractor shall provide the City's Contract Manager with a list of personnel scheduled to enter the building, seven days in advance. The list shall identify the persons by name, date of birth, driver's license number, the times that they will be onsite and the area(s) where they will be working. Only persons previously approved by the City will be admitted to the facility.
- E. The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees and subcontractors are kept fully informed as to these requirements.

12. 11. **ECONOMIC PRICE ADJUSTMENT:**

- A. **Price Adjustments:** Prices shown in this Contract shall remain firm for the first twelve 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 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.

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SODIUM HYPOCHLORITE
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- 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:** Complete table as they may apply.

Weight % or \$ of Base Price: 100%	
Database Name: Producer Product Index	
Series ID: PCU325998325998A	
<input checked="checked" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: National	
Description of Series ID: Water treating compounds	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: All	

- E. **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

- F. 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.

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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. **WORKING ON OR NEAR ENERGIZED EQUIPMENT – ARC FLASH PROTECTION (reference Section 0300 Paragraph 11. Compliance With Health, Safety, and Environmental Regulations):** Contractor's employees shall wear at all times the proper personal protective equipment and clothing required for the head, face, torso, arms, hands, and lower body that provides a minimum Arc Thermal Protection Value (ATPV) of 12 calories per square centimeter (cal/cm²) when working on or near energized electrical equipment, or greater, if required by the NFPA Standard 70E and/or Article 410 of the NESC for the work being performed.
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:

Lydia Torres, Contract Mgmt. Specialist III

512-972-0329

Lydia.torres@austintexas.gov

CITY OF AUSTIN
PURCHASE SPECIFICATION
FOR
SODIUM HYPOCHLORITE
IFB 2200 GLB0070

1.0 PURPOSE

The City of Austin (City) seeks bids in response to this solicitation to establish a contract(s) with a qualified Vendor (Contractor) who can provide Sodium Hypochlorite. The Sodium Hypochlorite will be used at Austin Water facilities in the disinfection treatment processes and used for filament bacteria control. The City reserves the right to add or delete departments and locations as deemed necessary at the same bid price.

Any services that have been omitted from this specification which are clearly necessary or in conformance with Sodium Hypochlorite, shall be considered a requirement although not directly specified or called for in this scope of work.

2.0 APPLICABLE SPECIFICATIONS

- 2.1 The Contractor shall ensure the Sodium Hypochlorite complies with federal, state and local laws, ordinances, and guidelines for this type of chemical.
- 2.2 The Sodium Hypochlorite shall comply with American Water Works Association (AWWA) standards as contained in the most recent AWWA B300 publication, except for any modifications contained in these specifications.
- 2.3 The Sodium Hypochlorite shall be certified as suitable for contact with or treatment of drinking water by an accredited certification organization in accordance with ANSI/NSF Standard 60, Drinking Water Treatment Chemicals – Health Effects.
- 2.4 The Contractor shall comply with:
 - 2.4.1 Environmental Protection Agency (EPA).
 - 2.4.2 Texas Commission on Environmental Quality (TCEQ).
 - 2.4.3 Occupational Safety and Health Administration (OSHA) safety requirements.
 - 2.4.4 Federal Motor Carrier Safety Regulations, specifically 49CFR part 383.
 - 2.4.5 City of Austin Ordinances and regulations.

3.0 MATERIAL REQUIREMENTS

- 3.1 The Sodium Hypochlorite shall be composed of the following:
 - Available chlorine (% by weight) -12.5%
 - Specific Gravity 1.19 – 1.26 @ 20 degrees Celsius
 - Virgin Sodium Hydroxide (% by weight) < 2%
 - Must be a clear yellowish green product (yellowish brown will not be accepted)
 - Formula NaOCl
- 3.2 The Sodium Hypochlorite shall be suitable for use in municipal water supplies and, when used in standard recommended dosages, shall not contain any impurities that would cause water to be unsuited for human consumption.
- 3.3 The Sodium Hypochlorite shall be free of any inorganic or organic substances in quantities capable of producing deleterious or injurious effects of the health of those consuming the water that has been properly treated with the Sodium Hypochlorite.

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- 3.4 The Sodium Hypochlorite shall not contain any impurities that would impart a taste and/or odor to the drinking water.

4.0 CONTRACTOR RESPONSIBILITIES

- 4.1 The Contractor shall be a manufacturer, authorized dealer/reseller, or supplier of the products offered.
- 4.2 Contractors shall ***include in the bid submittal*** an affidavit that the Sodium Hypochlorite complies with the applicable requirements of this specification, along with a Safety Data Sheet (SDS) and Federal DOT number.
- 4.3 The Contractor shall call the Plant Supervisor to schedule a kick-off meeting with five (5) business days to discuss this contract, delivery schedule and requirements.
- 4.4 The Contractor shall also provide at the kick-off meeting, a 24-hour office phone number, cell phone number, fax number and representative who will be able to respond to this contract.
- 4.5 The Contractor and employees shall wear the necessary Personal Protective Equipment (PPE) while on City property; to include helmet, vest, and steel-toed boots.
- 4.6 Manufacturer Data – the Contractor shall indicate the manufacturer's name of the product and shall indicate the shipping address/location from where the material is being shipped. In the event this information changes during the contract period and prior to the shipping the first shipment from the new location, the Contractor shall submit written notification to each Plant facility.
- 4.7 The City reserves the right to test the Contractor's product at any time during the contract period.
- 4.8 The Contractor shall notify the Plant Supervisor or designee in writing throughout the life of the contract of any changes in manufacture, product name and/or, if a manufacturer discontinues a Contract Item.
- 4.9 The Contractor shall request in writing approval from the Plant Supervisor or designee on any contract product substitution.
- 4.10 The Contractor shall be responsible for cleanup of any spillage or leakage during transportation and/or on the plant site due to defective unloading and/or negligence of the driver. The City reserves the right to inspect and reject any Sodium Hypochlorite shipment.
- 4.11 The Contractor shall replace the Sodium Hypochlorite within 12 hours of notification if the Plant Supervisor or designee notices that it is not meeting requirements. The Contractor shall remove the chemical and replace it with an equivalent volume of the acceptable chemical.
- 4.12 The Contractor shall include ***with the bid submittal*** a certified analysis of the Sodium Hypochlorite. This analysis shall include the following:
- Percent (%) by weight of Cl₂ (Available Chlorine)
 - Percent (%) by weight of NaOH (Sodium Hydroxide)
 - Percent (%) by weight of NaOCl (Sodium Hypochlorite)
 - Specific gravity
 - Color/Clarity

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5.0 SAFETY DATA SHEET (SDS) REQUIREMENTS

- 5.1 An SDS shall be included ***with the bid submittal***. Upon award, an electronic copy of the SDS with contract information shall be transmitted by the Contractor to the following City email address: David.Gaines@austintexas.gov .
- 5.2 Contracts for Supply of Hazardous Materials: With respect to all contracts under which the Contractor will deliver a "hazardous material" for which a "Safety Data Sheet" ("SDS") is required under Texas Health & Safety Code, Sec. 502.006, as amended, will provide, on or before the date of each delivery of the hazardous material, an electronic version of the most current "Safety Data Sheet" meeting the requirements set forth in Sec. 502.006, Texas Health & Safety Code. Each SDS provided shall bear the date when it was last revised.
- 5.3 The Contractor shall provide the City with a copy of the Safety Data Sheet on or before the date of each delivery of the chemical. Failure to provide the Safety Data Sheet on or before the date of each delivery may constitute grounds for termination of the contract.

6.0 CITY RESPONSIBILITIES

- 6.1 The Plant Supervisor or designee will provide updated Point of Contact for this contract if any changes of personnel occur during the term of this contract.

7.0 SECURITY

- 7.1 The City requires the Contractor to identify bulk chemical deliveries and driver information to the treatment plants to assure safe and accurate orders. The Contractor shall FAX a completed "Chemical Delivery Notice" to the Plant Supervisor or designee within 4 business hours prior to dispatching driver for delivery. The driver must provide a photo ID (any U.S. state) to the Plant Supervisor or designee, no exceptions.
- 7.2 Transportation of Hazardous Material to a City location must be in compliance with the Federal Motor Carrier Safety Regulations, specifically 49CFR part 383 which governs commercial driver license standards requirements and penalties. In accordance with this regulation, delivery driver shall present to Plant staff a Class C CDL with an H or an X endorsement at the time of delivery.
- 7.3 Hazardous Material is defined under 49 CFR part 383.5 as:

Any material that has been designated as hazardous referencing 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR Subpart F, Part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

**SECTION 0600 - BID SHEET
CITY OF AUSTIN
SODIUM HYPOCHLORITE**

SOLICITATION NO.: IFB GLB0070

AWU 816

Special Instructions: The City intends to award one contract based on overall low cost however reserves the right to make multiple awards based on individual or groups of specific line items, cost, 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. Be advised that exceptions taken or qualifying statements made to any portion of the solicitations may jeopardize acceptance of the bid and may result in disqualification of the bid. Prices being submitted shall include ALL discounts, handling and shipping charges, FOB Destination.

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 noted below are annual estimates and not a guarantee of actual volume. The City does not guarantee the purchase of the quantities listed. Quantities are provided as a guide based on historical usage. Actual purchases may be more or less.

Failure to respond to each section of this bid sheet may result in disqualification of your bid.

ITEM NO	ITEM DESCRIPTION	ESTIMATED ANNUAL QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
1	Sodium Hypochlorite - Remote Facilities MFG. NAME:	24,000	GAL	No bid	\$0.00
2	Sodium Hypochlorite - South Austin Regional WWTP (SAR) MFG. NAME:	1,400,000	GAL	\$0.640	\$896,000.00
TOTAL					\$896,000.00

Additional Products or Catalog Items

Please provide any other products or catalog items you will provide the City and the prices you would charge. This information will not be used in the evaluation of the bid and is for informational purposes only. There is no guarantee of purchase.

Please list any additional products or catalog items your Company offers and the associated discount off retail price or mark-up to cost for the listed products or catalog items. A bid of zero ('0') will be interpreted by the City that the additional products or catalog items will be sold at the Manufacturer's Suggested Retail Price. A 'no bid' or blank entry will be interpreted by the City that your Company does not wish to provide additional products or catalog items. This information is for informational purposes only and will not be evaluated. The City does not guarantee the purchase of any additional products or catalog items.

ITEM NO.	DESCRIPTION OF OTHER SERVICES OR PRODUCTS	PRICE* LATEST EFFECTIVE DATE OF PRICE LIST	UNIT OF MEASURE
4	Percentage discount off catalogue/price list of other items: Indicate the discount from Manufacturer's Suggested Retail Price.		_____ % Discount
5	Other:		

* Unless otherwise specified, Price may be quoted as a firm-fixed price or as a percentage discount from quoteder's regular fees.

**SECTION 0600 - BID SHEET
CITY OF AUSTIN
SODIUM HYPOCHLORITE**

x	Offer Sheet - required			
x	Bid Sheet (Section 0600) -required			
x	Local Business Presence Identification Form (Section 0605) - If applicable			
x	Reference Sheet (Section 0700) -required			
x	Non-Discrimination and Non-Retaliation Certification (Section 0800) -required			
x	Nonresident Provisions (Section 0835)- required			
x	Sub-Contracting/Sub-Consulting Utilization Form (Section 0900) - required			
<input type="checkbox"/>	Copy of return policy and credit memo procedures- if applicable			
x	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Safety Data Sheet for SODIUM HYPOCHLORITE-REQUIRED</td> <td style="width: 10%; text-align: center;">x</td> <td style="width: 40%;">EMAILED TO david.gaines@austintexas.gov</td> </tr> </table>	Safety Data Sheet for SODIUM HYPOCHLORITE-REQUIRED	x	EMAILED TO david.gaines@austintexas.gov
Safety Data Sheet for SODIUM HYPOCHLORITE-REQUIRED	x	EMAILED TO david.gaines@austintexas.gov		
x	Affidavit for SODIUM HYPOCHLORITE compliance-REQUIRED			
x	Certified Analysis for SODIUM HYPOCHLORITE -REQUIRED			
x				
x				

DELIVERY TERMS: DELIVERY IS TO BE FOB DESTINATION, PREPAID AND ALLOWED

Delivery Method: FSTI company owned transports with Company employed drivers

Company Name: FSTI, Inc

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	ESTI, Inc	
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	<input checked="" type="radio"/> Yes	<input type="radio"/> No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years?	<input type="radio"/> Yes	<input type="radio"/> 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="radio"/> Yes	<input type="radio"/> No

SUBCONTRACTOR(S):

Name of Local Firm	N/A	
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	<input type="radio"/> Yes	<input type="radio"/> No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	<input type="radio"/> Yes	<input type="radio"/> 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 SheetResponding Company Name ESTI, Inc

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 City of Sulphur Springs
Name and Title of Contact Russell Ham - WTP Superintendent
Project Name _____
Present Address 825 Hillcrest Dr. N
City, State, Zip Code Sulphur Springs, TX 75482
Telephone Number (903) 439-2891 Fax Number () _____
Email Address rcham@sulphurspringstx.org
2. Company's Name Upper Trinity Regional Water District
Name and Title of Contact Kari Schachere - Purchasing Specialist
Project Name _____
Present Address 400 N Keady St.
City, State, Zip Code Louisville, TX 75057
Telephone Number (972) 219-1225 ^{ext. 8156} Fax Number () _____
Email Address Kschachere@utrwad.com
3. Company's Name City of Denton
Name and Title of Contact Robyn Forsyth - Buyer
Project Name _____
Present Address 901 B Texas St
City, State, Zip Code Denton, TX 76209
Telephone Number (940) 349-7101 Fax Number () _____
Email Address robyn.forsyth@cityofdenton.com

City of Austin, Texas

Section 0800

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:

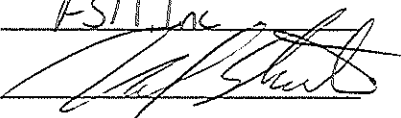
The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees 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 9th day of February, 2018

CONTRACTOR

Authorized Signature

Title

FSTI Inc

Sales - Category Manager

Section 0835: Non-Resident Bidder Provisions

Company Name ESTL, Inc

- 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: _____ Which State: _____

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

Answer: _____

Section 0900: SUBCONTRACTING/SUB-CONSULTING UTILIZATION FORM

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form**

SOLICITATION NUMBER: GLB0070

SOLICITATION TITLE: Sodium Hypochlorite

In accordance with the City of Austin's Minority and Women-Owned Business Enterprises (M/WBE) Procurement Program (Program), Chapters 2-9A/B/C/D of the City Code and M/WBE Program Rules, this Solicitation was reviewed by the Small and Minority Business Resources Department (SMBR) to determine if M/WBE Subcontractor/Sub-Consultant ("Subcontractor") Goals could be applied. Due to insufficient subcontracting/subconsultant opportunities and/or insufficient availability of M/WBE certified firms, SMBR has assigned no subcontracting goals for this Solicitation. However, Offerors who choose to use Subcontractors must comply with the City's M/WBE Procurement Program as described below. Additionally, if the Contractor seeks to add Subcontractors after the Contract is awarded, the Program requirements shall apply to any Contract(s) resulting from this Solicitation.

Instructions:

- a.) Offerors who do not intend to use Subcontractors shall check the "NO" box and follow the corresponding instructions.
b.) Offerors who intend to use Subcontractors shall check the applicable "YES" box and follow the instructions. **Offers that do not include the following required documents shall be deemed non-compliant or nonresponsive as applicable, and the Offeror's submission may not be considered for award.**

☒ **NO, I DO NOT** intend to use Subcontractors/Sub-consultants.

Instructions: Offerors that do not intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form) and include it with their sealed Offer.

☐ **YES, I DO** intend to use Subcontractors/Sub-consultants.

Instructions: Offerors that do intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form), and follow the additional Instructions in the (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan). Contact SMBR if there are any questions about submitting these forms.

Offeror Information			
Company Name	FSTI, Inc		
City Vendor ID Code	FSTB315028 - FSTB315028		
Physical Address	6300 Bridgepoint Pkwy 1-200		
City, State Zip	Austin, TX 78730		
Phone Number	512-278-8800	Email Address	mshulken@fstichen.com
Is the Offeror City of Austin M/WBE certified?	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES Indicate one: <input type="checkbox"/> MBE <input checked="" type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture		

Offeror Certification: I understand that even though SMBR did not assign subcontract goals to this Solicitation, I will comply with the City's M/WBE Procurement Program if I intend to include Subcontractors in my Offer. I further agree that this completed **Subcontracting/Sub-Consulting Utilization Form**, and if applicable my completed **Subcontracting/Sub-Consulting Utilization Plan**, shall become a part of any Contract I may be awarded as the result of this Solicitation. Further, if I am awarded a Contract and I am not using Subcontractor(s) but later intend to add Subcontractor(s), before the Subcontractor(s) is hired or begins work, I will comply with the City's M/WBE Procurement Program and submit the **Request For Change** form to add any Subcontractor(s) to the Project Manager or the Contract Manager for prior authorization by the City and perform Good Faith Efforts (GFE), if applicable. I understand that, if a Subcontractor is not listed in my **Subcontracting/Sub-Consulting Utilization Plan**, it is a violation of the City's M/WBE Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begin work, unless I first obtain City approval of my **Request for Change** form. I understand that, if a Subcontractor is not listed in my **Subcontracting/Sub-Consulting Utilization Plan**, it is a violation of the City's M/WBE Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begin work, unless I first obtain City approval of my **Request for Change** form.

Michael Shulken Sals + Category MBE

[Signature] 2/9/15

Name and Title of Authorized Representative (Print or Type)

Signature/Date

Section 0905: SUBCONTRACTING/SUB-CONSULTING UTILIZATION PLAN

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM**

Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan

SOLICITATION NUMBER: GLB0070

SOLICITATION TITLE: Sodium Hypochlorite

INSTRUCTIONS: Offerors who DO intend to use Subcontractors may utilize M/WBE Subcontractor(s) or perform Good Faith efforts when retaining Non-certified Subcontractor(s). Offerors must determine which type of Subcontractor(s) they are anticipating to use (CERTIFIED OR NON-CERTIFIED), check the box of their applicable decision, and comply with the additional instructions associated with that particular selection.

- ☐ I intend to use City of Austin CERTIFIED M/WBE Subcontractor/Sub-consultant(s).

Instructions: Offerors may use Subcontractor(s) that ARE City of Austin certified M/WBE firms. Offerors shall contact SMBR (512-974-7600 or SMBRComplianceDocuments@austintexas.gov) to confirm if the Offeror's intended Subcontractor(s) are City of Austin certified M/WBE and if these firm(s) are certified to provide the goods and services the Offeror intends to subcontract. If the Offeror's Subcontractor(s) are current valid certified City of Austin M/WBE firms, the Offeror shall insert the name(s) of their Subcontractor(s) into the table below and must include the following documents in their sealed Offer:

- Subcontracting/Sub-Consulting Utilization Form (completed and signed)
- Subcontracting/Sub-Consulting Utilization Plan (completed)

- ☐ I intend to use NON-CERTIFIED Subcontractor/Sub-Consultant(s) after performing Good Faith Efforts.

Instructions: Offerors may use Subcontractors that ARE NOT City of Austin certified M/WBE firms ONLY after Offerors have first demonstrated Good Faith Efforts to provide subcontracting opportunities to City of Austin M/WBE firms.

STEP ONE: Contact SMBR for an availability list for the scope(s) of work you wish to subcontract;

STEP TWO: Perform Good Faith Efforts (Check List provided below);

STEP THREE: Offerors shall insert the name(s) of their certified or non-certified Subcontractor(s) into the table below and must include the following documents in their sealed Offer:

- Subcontracting/Sub-Consulting Utilization Form (completed and signed)
- Subcontracting/Sub-Consulting Utilization Plan (completed)
- All required documentation demonstrating the Offeror's performance of Good Faith Efforts (see Check List below)

GOOD FAITH EFFORTS CHECK LIST –

When using NON-CERTIFIED Subcontractor/Sub-consultants(s), **ALL** of the following **CHECK BOXES MUST** be completed in order to meet and comply with the Good Faith Effort requirements and all documentation must be included in your sealed Offer. Documentation CANNOT be added or changed after submission of the bid.

- ☐ **Contact SMBR.** Offerors shall contact SMBR (512-974-7600 or SMBRComplianceDocuments@austintexas.gov) to obtain a list of City of Austin certified M/WBE firms that are certified to provide the goods and services the Offeror intends to subcontract out. (Availability List). Offerors shall document their contact(s) with SMBR in the "SMBR Contact Information" table on the following page.
- ☐ **Contact M/WBE firms.** Offerors shall contact all of the M/WBE firms on the Availability List with a Significant Local Business Presence which is the Austin Metropolitan Statistical Area, to provide information on the proposed goods and services proposed to be subcontracted and give the Subcontractor the opportunity to respond on their interest to bid on the proposed scope of work. When making the contacts, Offerors shall use at least two (2) of the following communication methods: email, fax, US mail or phone. Offerors shall give the contacted M/WBE firms at least seven days to respond with their interest. Offerors shall document all evidence of their contact(s) including: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM**

Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan

SOLICITATION NUMBER: GLB0070

SOLICITATION TITLE: Sodium Hypochlorite

- ☐ **Follow up with responding M/WBE firms.** Offeror shall follow up with all M/WBE firms that respond to the Offeror's request. Offerors shall provide written evidence of their contact(s): emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.

- ☐ **Advertise.** Offerors shall place an advertisement of the subcontracting opportunity in a local publication (i.e. newspaper, minority or women organizations, or electronic/social media). Offerors shall include a copy of their advertisement, including the name of the local publication and the date the advertisement was published.

- ☐ **Use a Community Organization.** Offerors shall solicit the services of a community organization(s); minority persons/women contractors'/trade group(s); local, state, and federal minority persons/women business assistance office(s); and other organizations to help solicit M/WBE firms. Offerors shall provide written evidence of their Proof of contact(s) include: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, organization contacted, phone number, email address and contact person.

MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)

PROCUREMENT PROGRAM

Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan

SOLICITATION NUMBER: GLB0070

SOLICITATION TITLE: Sodium Hypochlorite

(Offerors may duplicate this page to add additional Subcontractors as needed)

Subcontractor/Sub-consultant	
City of Austin Certified	<input type="checkbox"/> MBE <input type="checkbox"/> WBE Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Vendor ID Code	
Contact Person	Phone Number:
Additional Contact Info	Fax Number: E-mail:
Amount of Subcontract	\$
List commodity codes & description of services	
Justification for not utilizing a certified MBE/WBE	

Subcontractor/Sub-consultant	
City of Austin Certified	<input type="checkbox"/> MBE <input type="checkbox"/> WBE Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Vendor ID Code	
Contact Person	Phone Number:
Additional Contact Info	Fax Number: E-mail:
Amount of Subcontract	\$
List commodity codes & description of services	
Justification for not utilizing a certified MBE/WBE	

SMBR Contact Information			
SMBR Contact Name	Contact Date	Means of Contact	Reason for Contact
		<input type="checkbox"/> Phone OR <input type="checkbox"/> Email	

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

Having reviewed this plan, I acknowledge that the Offeror ☐ HAS or ☐ HAS NOT complied with these instructions and City Code Chapters 2-9A/B/C/D, as amended.

Reviewing Counselor

Date

I have reviewed the completing the Subcontracting/Sub-Consultant Utilization Plan and ☐ Concur ☐ Do Not Concur with the Reviewing Counselor's recommendation.

Director/Assistant Director or Designee

Date



**ADDENDUM
PURCHASING OFFICE
CITY OF AUSTIN, TEXAS**

Solicitation: IFB 2200 GLB0070

Addendum No: 1

Date of Addendum: 2/9/17

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

- I. **Questions:** The following questions were posed by one or more contractors in writing. Each question (Q) is followed by its answer (A).
1. (Q) Can you provide the Bid Tab from current contract?
(A) The solicitation is taken from two contracts. The following are the links to those two solicitation that have the bids sheets under attachments:
https://www.austintexas.gov/financeonline/vendor_connection/solicitation/solicitation_details.cfm?sid=104234
https://www.austintexas.gov/financeonline/vendor_connection/solicitation/solicitation_details.cfm?sid=103986
 2. (Q) For the remote locations it is stated delivery to be in 100-400 gals every 7 days is this correct?
(A) This is correct.
 3. (Q) Does this same amount apply to the South WWTP? Or is this one to be bulk Delivery?
(A) This Plant will receive in larger bulk deliver.
 4. (Q) Will the city of Austin be awarding the bid to one company for both the smaller deliveries and the FTL deliveries (1,400,000 gals.) to the same provider? Or will they reserve the right to award the bid to two separate providers?
(A) Stated on the Bid Sheet Section 0600, The City intends to award one contract based on overall low cost however reserves the right to make multiple awards based on individual or groups of specific line items, cost, or any criteria or any combination deemed most advantageous to the City.
 5. (Q) Are orders placed at the SAR plant always truckload quantities?
(A) Yes this are
 6. (Q) On page 3 of 11 (A) under supplemental purchase provisions, can we contact the plant and request a site visit to insure delivery conditions?
(A) Yes you may however you need to contact Georgia Billela for appointment time. This is only to see delivery conditions and nothing more.
 7. (Q) Are city personnel required to be present when delivering to remote locations?
(A) Yes

II. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

APPROVED BY:



Georgia Billela, Procurement Specialist III
Purchasing Office, 512-974-2939

2/9/18
Date

ACKNOWLEDGED BY:

Michael Shelton

Name



Authorized Signature

2/12/18
Date

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.

AUSTIN WATER UTILITY*******NOTICE OF CHEMICAL DELIVERY*******

CHEMICAL VENDOR NAME: _____

TRUCKING COMPANY NAME: _____

COMPANY CONTACT PHONE: _____ DATE OF THIS NOTICE: _____

TYPE OF CHEMICAL TO BE DELIVERED: _____

DELIVERY INFORMATION:

DESTINATION: _____ TIME DELIVERY LEFT COMPANY: _____

ESTIMATED ARRIVAL TIME: _____

TRUCK DESCRIPTION:

MAKE: _____ MODEL: _____ COLOR: _____

TRUCK (front) LICENSE PLATE #: _____ TANK SECURITY SEAL #: _____

TRUCK / TANKER #: _____ / _____

DRIVER & COMMERCIAL DRIVER'S LICENSE (CDL) INFORMATION:

 DRIVER NAME (not necessary at this time)
 DRIVER CDL NUMBER & EXPIRATION DATE

 DRIVER CONTACT PHONE CDL ENDORSEMENT ON LICENSE? YES NO
 Circle One

CDL ENDORSEMENT CODE: H or X or N
 Circle One

(This section for AWU use only)

Actual arrival time: _____ Is CDL endorsement code appropriate for this vehicle*? YES NO
 Circle One

I have verified the information submitted on this form with actual conditions at delivery:

AWU Staff Signature: _____ Printed Name: _____

*Endorsement letters: N = Required for tanker vehicle

H = Required for transporting hazardous materials that require display of placards on truck/trailer

X = Combines N and H; Required for operating tanker vehicles carrying hazardous materials

This form should be retained and submitted with the related payment materials to AWU Accounts Payable.

NOTE: THIS FORM SHALL BE FAXED TO DELIVERY LOCATION SITE SUPERVISOR WHEN DRIVER HAS BEEN DISPATCHED FOR DELIVERY TO AUSTIN WATER UTILITY DELIVERY SITE. PLEASE CALL (512) 972-0310 WITH ANY QUESTIONS OR CONCERNS REGARDING THIS FORM.

{AWU REVISED 09/15/2013SS, Form 2013C}



6300 Bridge Point Pkwy
Austin, TX 78730
512-278-8800

February 12, 2018

Re: Sodium Hypochlorite affidavit of compliance - IFB 2200 GLB0070

Dear City of Austin:

As the product manufacturer, we take great pride in supplying the highest quality product in our market. We guarantee that our product will meet or exceed our product specification and adhere to our EPA Registration guidelines, NSF, TCEQ and the City of Austin's Ordinances and regulations.

Should you require any further certifications please contact our corporate office.

Sincerely,

Michael Shelton
FSTI

USDOT Number MC/MX Number Name

Enter Value: 1272960

Search

Company Snapshot**FSTI INC**

USDOT Number: 1272960

ID/Operations | [Inspections/Crashes In US](#) | [Inspections/Crashes In Canada](#) | [Safety Rating](#)**Other Information for this Carrier**

Carriers: If you would like to update the following ID/Operations information, please complete and submit form [MCS-150](#) which can be obtained [online](#) or from your State FMCSA office. If you would like to challenge the accuracy of your company's safety data, you can do so using FMCSA's [DataQs](#) system.

▼ [SMS Results](#)▼ [Licensing & Insurance](#)

Carrier and other users: FMCSA provides the Company Safety Profile (CSP) to motor carriers and the general public interested in obtaining greater detail on a particular motor carrier's safety performance then what is captured in the Company Snapshot. To obtain a CSP please visit the [CSP order page](#) or call (800)832-5660 or (703)280-4001 (Fee Required).

For help on the explanation of individual data fields, click on any field name or for help of a general nature go to [SAFER General Help](#).

The information below reflects the content of the FMCSA management information systems as of 02/12/2018. Carrier VMT Outdated.

<u>Entity Type:</u> CARRIER/SHIPPER																															
<u>Operating Status:</u> AUTHORIZED FOR Property	<u>Out of Service Date:</u> None																														
<u>Legal Name:</u> FSTI INC																															
<u>DBA Name:</u>																															
<u>Physical Address:</u> 6300 BRIDEPOINT PARKWAY SUITE 1-200 AUSTIN, TX 78730																															
<u>Phone:</u> (512) 278-8800																															
<u>Mailing Address:</u> 6300 BRIDEPOINT PARKWAY SUITE 1-200 AUSTIN, TX 78730																															
<u>USDOT Number:</u> 1272960	<u>State Carrier ID Number:</u>																														
<u>MC/MX/FF Number(s):</u> MC-496828	<u>DUNS Number:</u> 15-281-624																														
<u>Power Units:</u> 70	<u>Drivers:</u> 36																														
<u>MCS-150 Form Date:</u> 10/27/2016	<u>MCS-150 Mileage (Year):</u> 2,577,004 (2015)																														
<u>Operation Classification:</u>																															
<table border="0"> <tr> <td><input checked="" type="checkbox"/> Auth. For Hire</td> <td>Priv. Pass.(Non-business)</td> <td>State Gov't</td> </tr> <tr> <td><input type="checkbox"/> Exempt For Hire</td> <td></td> <td>Local Gov't</td> </tr> <tr> <td><input checked="" type="checkbox"/> Private(Property)</td> <td>Migrant</td> <td>Indian Nation</td> </tr> <tr> <td><input type="checkbox"/> Priv. Pass. (Business)</td> <td>U.S. Mail</td> <td></td> </tr> <tr> <td></td> <td>Fed. Gov't</td> <td></td> </tr> </table>		<input checked="" type="checkbox"/> Auth. For Hire	Priv. Pass.(Non-business)	State Gov't	<input type="checkbox"/> Exempt For Hire		Local Gov't	<input checked="" type="checkbox"/> Private(Property)	Migrant	Indian Nation	<input type="checkbox"/> Priv. Pass. (Business)	U.S. Mail			Fed. Gov't																
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<u>HM Shipper Operation:</u>																															
<input checked="" type="checkbox"/> Interstate <input type="checkbox"/> Intrastate																															
<u>Cargo Carried:</u>																															
<table border="0"> <tr> <td>General Freight</td> <td>Liquids/Gases</td> <td><input checked="" type="checkbox"/> Chemicals</td> </tr> <tr> <td>Household Goods</td> <td>Intermodal Cont.</td> <td>Commodities Dry Bulk</td> </tr> <tr> <td>Metal: sheets, coils, rolls</td> <td>Passengers</td> <td>Refrigerated Food</td> </tr> <tr> <td>Motor Vehicles</td> <td>Oilfield Equipment</td> <td>Beverages</td> </tr> <tr> <td>Drive/Tow away</td> <td>Livestock</td> <td>Paper Products</td> </tr> <tr> <td>Logs, Poles, Beams, Lumber</td> <td>Grain, Feed, Hay</td> <td>Utilities</td> </tr> <tr> <td>Building Materials</td> <td>Coal/Coke</td> <td>Agricultural/Farm Supplies</td> </tr> <tr> <td>Mobile Homes</td> <td>Meat</td> <td>Construction</td> </tr> <tr> <td>Machinery, Large Objects</td> <td>Garbage/Refuse</td> <td>Water Well</td> </tr> <tr> <td>Fresh Produce</td> <td>US Mail</td> <td></td> </tr> </table>		General Freight	Liquids/Gases	<input checked="" type="checkbox"/> Chemicals	Household Goods	Intermodal Cont.	Commodities Dry Bulk	Metal: sheets, coils, rolls	Passengers	Refrigerated Food	Motor Vehicles	Oilfield Equipment	Beverages	Drive/Tow away	Livestock	Paper Products	Logs, Poles, Beams, Lumber	Grain, Feed, Hay	Utilities	Building Materials	Coal/Coke	Agricultural/Farm Supplies	Mobile Homes	Meat	Construction	Machinery, Large Objects	Garbage/Refuse	Water Well	Fresh Produce	US Mail	
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[ID/Operations](#) | [Inspections/Crashes In US](#) | [Inspections/Crashes In Canada](#) | [Safety Rating](#)

US Inspection results for 24 months prior to: 02/12/2018

Total Inspections: 65

Total IEP Inspections: 0

Note: Total inspections may be less than the sum of vehicle, driver, and hazmat inspections. Go to [Inspections Help](#) for further information.

Inspection Type	Vehicle	<u>Inspections:</u>		Hazmat	IEP
		Driver			
Inspections	61	65		56	0
Out of Service	5	1		1	0
Out of Service %	8.2%	1.5%		1.8%	0%
Nat'l Average % (2009- 2010)	20.72%	5.51%		4.50%	N/A

Crashes reported to FMCSA by states for 24 months prior to: 02/12/2018

Note: Crashes listed represent a motor carrier's involvement in reportable crashes, without any determination as to responsibility.

Type	Fatal	<u>Crashes:</u>		Total
		Injury	Tow	
Crashes	0	0	2	2

[ID/Operations](#) | [Inspections/Crashes In US](#) | [Inspections/Crashes In Canada](#) | [Safety Rating](#)

Canadian Inspection results for 24 months prior to: 02/12/2018

Total inspections: 0

Note: Total inspections may be less than the sum of vehicle and driver inspections. Go to [Inspections Help](#) for further information.

Inspection Type	<u>Inspections:</u>	
	Vehicle	Driver
Inspections	0	0
Out of Service	0	0
Out of Service %	0%	0%

Crashes results for 24 months prior to: 02/12/2018

Note: Crashes listed represent a motor carrier's involvement in reportable crashes, without any determination as to responsibility.

Type	Fatal	<u>Crashes:</u>		Total
		Injury	Tow	
Crashes	0	0	0	0

[ID/Operations](#) | [Inspections/Crashes In US](#) | [Inspections/Crashes In Canada](#) | [Safety Rating](#)

The Federal safety rating does not necessarily reflect the safety of the carrier when operating in intrastate commerce.

Carrier Safety Rating:

The rating below is current as of: 02/12/2018

Review Information:

Rating Date: 03/02/2007
Rating: Satisfactory

Review Date: 06/06/2014
Type: Non-Ratable



The Public Health and Safety Organization

NSF Product and Service Listings

These NSF Official Listings are current as of **Wednesday, August 20, 2014** at 12:15 a.m. Eastern Time. Please contact NSF International to confirm the status of any Listing, report errors, or make suggestions.

Alert: NSF is concerned about fraudulent downloading and manipulation of website text. Always confirm this information by clicking on the below link for the most accurate information: <http://info.nsf.org/Certified/PwsChemicals/Listings.asp?CompanyName=FSTI&>

NSF/ANSI 60 Drinking Water Treatment Chemicals - Health Effects

FSTI, Inc.

6300 Bridgepoint Parkway

Suite 2-110

Austin, TX 78730

United States

888-290-7548

512-278-8800

Visit this company's website (<http://www.fstichem.com>)

Facility : Greenville, TX

Citric Acid

Trade Designation

Citric Acid[1] [2]

Product Function

Membrane Cleaner

Max Use

NA

[1] This product is designed to be used off-line and flushed out prior to using the system for drinking water, following manufacturer's use instructions.

[2] The pH of the influent and effluent water should be monitored to ensure that all traces of the product have been removed before placing into service.

Hydrochloric Acid

Trade Designation

Hydrochloric Acid 20° balm A

Product Function

Corrosion & Scale Control

Max Use

40mg/L

pH Adjustment

Hydrochloric Acid 22° balm A

Corrosion & Scale Control

40mg/L

pH Adjustment

Muratic Acid

Corrosion & Scale Control

40mg/L

pH Adjustment

Sodium Chloride[3]

<i>Trade Designation</i>	<i>Product Function</i>	<i>Max Use</i>
Brine 200gpl	Other	NA
Pure Brine 300gpl	Other	NA
Salt Water	Other	NA

[3] Certified for use in the electrochlorination process for on-site disinfectant generators.

Sodium Hydroxide

<i>Trade Designation</i>	<i>Product Function</i>	<i>Max Use</i>
25% to 32% Membrane Grade Caustic	Corrosion & Scale Control pH Adjustment	200mg/L
Sodium Hydroxide 25%	Corrosion Control pH Adjustment	200mg/L
Sodium Hydroxide 50%	Corrosion Control pH Adjustment	100mg/L

Sodium Hypochlorite[CL]

<i>Trade Designation</i>	<i>Product Function</i>	<i>Max Use</i>
Sodium Hypochlorite 10%	Algicide Disinfection & Oxidation	105mg/L
Sodium Hypochlorite 12.5%	Algicide Disinfection & Oxidation	84mg/L
Sodium Hypochlorite 5.25%	Algicide Disinfection & Oxidation	200mg/L
Sodium Hypochlorite 6%	Algicide Disinfection & Oxidation	175mg/L
Sodium Hypochlorite 8%	Algicide Disinfection & Oxidation	130mg/L

[CL] The residual levels of chlorine (hypochlorite ion and hypochlorous acid), chlorine dioxide, chlorate ion, chloramine and disinfection by-products shall be monitored in the finished drinking water to ensure compliance to all applicable regulations.

Number of matching Manufacturers is 1

Number of matching Products is 15

Processing time was 0 seconds



PRODUCT SPECIFICATIONS

LN-002-4

Sodium Hypochlorite, 12.5% (by Weight)

Material Name:	12.5% by weight Sodium Hypochlorite
Alternate Description:	12.5% Bleach
CAS Number:	7681-52-9
UN Number:	1791
Empirical Formula:	NaOCl
Average Molecular Weight:	74.44
pH:	<12
Odor:	Strong characteristic odor
Description:	The appearance and color shall be clear, Yellow-Green, and free of particulate matter.

Specifications:

Characteristic	Min	Target	Max
Appearance and Quality		Clear Yellow-Green Liquid	
Available Cl ₂ Wt%	11.43	11.91	12.38
Available Cl ₂ g/L	136.3	143.3	150.3
% NaOCl Wt%	12.0	12.5	13.0
% NaOH Wt%	0.2	0.4	0.6
NaClO ₃ g/L	1.3	1.4	1.50
Specific Gravity	1.18	1.20	1.22
Suspended Solids second	N/A	N/A	<160
Iron ppm	N/A	N/A	<0.50
Nickel ppm	N/A	N/A	<0.05
Copper ppm	N/A	N/A	<0.05
Bromate ion ppm	N/A	N/A	5
Antimony ppm	N/A	N/A	<0.08
Arsenic ppm	N/A	N/A	<0.008
Cadmium ppm	N/A	N/A	<0.004
Chromium ppm	N/A	N/A	<0.024



FSTI CHEMICAL AND LOGISTICS

Lead ppm	N/A	N/A	<0.02
Mercury ppm	N/A	N/A	<0.008
Nickel ppm	N/A	N/A	<0.04
Selenium ppm	N/A	N/A	<0.04

* ASTM D2022-89(2008)

* ICP by an External Lab.

SAFETY DATA SHEET

1. Identification

Product identifier SODIUM HYPOCHLORITE (ALL GRADES)
Other means of identification Not available.
Synonym(s) Sodium hypochlorite
Recommended use Disinfectant, bleaching agent, source of available chlorine, deodorizer
Recommended restrictions None known.

Manufacturer/Importer/Supplier/Distributor information

Manufacturer

Company name FSTI Inc
Address 6300 Bridgepoint Pkwy
Suite 1-200
Austin, TX 78730
United States
Telephone (888) 290-7548
E-mail Not available.
Emergency phone number (877) 742-4215

2. Hazard(s) identification

SWS Environmental

Physical hazards Not classified.
Health hazards Acute toxicity, oral Category 4
Skin corrosion/irritation Category 1
Serious eye damage/eye irritation Category 1
Environmental hazards Not classified.
OSHA defined hazards Not classified.

Label elements



Signal word Danger
Hazard statement Harmful in contact with skin. Causes severe skin burns and eye damage. Causes serious eye damage.

Precautionary statement

Prevention Do not breathe mist or vapor. Wash thoroughly after handling. Wear protective gloves/protective clothing/eye protection/face protection.
Response If swallowed: Rinse mouth. Do NOT induce vomiting. If on skin (or hair): Take off immediately all contaminated clothing. Rinse skin with water/shower. If inhaled: Remove person to fresh air and keep comfortable for breathing. If in eyes: Rinse cautiously with water for several minutes. Remove contact lenses, if present and easy to do. Continue rinsing. Immediately call a poison center/doctor. Specific treatment (see this label). Take off contaminated clothing and wash before reuse.
Storage Store locked up.
Disposal Dispose of contents/container in accordance with local/regional/national/international regulations.

Hazard(s) not otherwise classified (HNOC) None known.

Supplemental information % of the mixture consists of component(s) of unknown acute dermal toxicity.

3. Composition/information on ingredients

Mixtures

Chemical name	Common name and synonyms	CAS number	%
SODIUM HYPOCHLORITE		7681-52-9	7 - 13
SODIUM HYDROXIDE		1310-73-2	< 1

*Designates that a specific chemical identity and/or percentage of composition has been withheld as a trade secret.

4. First-aid measures

Inhalation

Move to fresh air. Call a physician if symptoms develop or persist.

Skin contact

Take off immediately all contaminated clothing. Rinse skin with water/shower. Call a physician or poison control center immediately. Chemical burns must be treated by a physician. Wash contaminated clothing before reuse.

Eye contact

Immediately flush eyes with plenty of water for at least 15 minutes. Remove contact lenses, if present and easy to do. Continue rinsing. Call a physician or poison control center immediately.

Ingestion

Call a physician or poison control center immediately. Rinse mouth. Do not induce vomiting. If vomiting occurs, keep head low so that stomach content doesn't get into the lungs.

Most important symptoms/effects, acute and delayed

Burning pain and severe corrosive skin damage. Causes serious eye damage. Symptoms may include stinging, tearing, redness, swelling, and blurred vision. Permanent eye damage including blindness could result.

Indication of immediate medical attention and special treatment needed

Provide general supportive measures and treat symptomatically. Chemical burns: Flush with water immediately. While flushing, remove clothes which do not adhere to affected area. Call an ambulance. Continue flushing during transport to hospital. Keep victim under observation. Symptoms may be delayed.

General information

Ensure that medical personnel are aware of the material(s) involved, and take precautions to protect themselves. Wash contaminated clothing before reuse.

5. Fire-fighting measures

Suitable extinguishing media

Water fog. Foam. Dry chemical powder. Carbon dioxide (CO₂).

Unsuitable extinguishing media

Do not use water jet as an extinguisher, as this will spread the fire.

Specific hazards arising from the chemical

During fire, gases hazardous to health may be formed.

Special protective equipment and precautions for firefighters

Self-contained breathing apparatus and full protective clothing must be worn in case of fire.

Fire-fighting equipment/instructions

Use water spray to cool unopened containers.

Specific methods

Move containers from fire area if you can do so without risk.

General fire hazards

No unusual fire or explosion hazards noted.

6. Accidental release measures

Personal precautions, protective equipment and emergency procedures

Keep unnecessary personnel away. Keep people away from and upwind of spill/leak. Keep out of low areas. Wear appropriate protective equipment and clothing during clean-up. Do not breathe mist or vapor. Do not touch damaged containers or spilled material unless wearing appropriate protective clothing. Ensure adequate ventilation. Local authorities should be advised if significant spillages cannot be contained. For personal protection, see section 8 of the SDS.

Methods and materials for containment and cleaning up

This material is classified as a water pollutant under the Clean Water Act and should be prevented from contaminating soil or from entering sewage and drainage systems which lead to waterways. Should not be released into the environment.

Large Spills: Stop the flow of material, if this is without risk. Dike the spilled material, where this is possible. Cover with plastic sheet to prevent spreading. Absorb in vermiculite, dry sand or earth and place into containers. Use water spray to reduce vapors or divert vapor cloud drift. Following product recovery, flush area with water.

Small Spills: Wipe up with absorbent material (e.g. cloth, fleece). Clean surface thoroughly to remove residual contamination.

Never return spills to original containers for re-use. For waste disposal, see section 13 of the SDS.

Environmental precautions

Prevent further leakage or spillage if safe to do so. Do not contaminate water. Avoid discharge into drains, water courses or onto the ground.

7. Handling and storage

Precautions for safe handling

Do not breathe mist or vapor. Do not get this material in contact with eyes. Do not get this material in contact with skin. Do not taste or swallow. Avoid prolonged exposure. Do not get this material on clothing. Provide adequate ventilation. Wear appropriate personal protective equipment. Observe good industrial hygiene practices. Wash contaminated clothing before reuse.

Conditions for safe storage, including any incompatibilities

Store locked up. Store in original tightly closed container. Store away from incompatible materials (see Section 10 of the SDS).

8. Exposure controls/personal protection

Occupational exposure limits

US. OSHA Table Z-1 Limits for Air Contaminants (29 CFR 1910.1000)

Components	Type	Value
SODIUM HYDROXIDE	PEL	2 mg/m ³

(CAS 1310-73-2)

US. ACGIH Threshold Limit Values

Components	Type	Value
SODIUM HYDROXIDE	Ceiling	2 mg/m3

(CAS 1310-73-2)

US. NIOSH: Pocket Guide to Chemical Hazards

Components	Type	Value
SODIUM HYDROXIDE	Ceiling	2 mg/m3

(CAS 1310-73-2)

US. Workplace Environmental Exposure Level (WEEL) Guides

Components	Type	Value
SODIUM HYPOCHLORITE	STEL	2 mg/m3

(CAS 7681-52-9)

Biological limit values No biological exposure limits noted for the ingredient(s).

Appropriate engineering Good general ventilation (typically 10 air changes per hour) should be used. Ventilation rates controls should be matched to conditions. If applicable, use process enclosures, local exhaust ventilation,

or other engineering controls to maintain airborne levels below recommended exposure limits.

If exposure limits have not been established, maintain airborne levels to an acceptable level. Eye wash facilities and emergency shower must be available when handling this product. **Individual protection measures, such as personal protective equipment**

Eye/face protection Wear safety goggles for chemical splash protection and a face shield. Wear a full-face or half-face respirator, if needed.

Skin protection

Hand protection Wear appropriate chemical resistant gloves.

Other Wear appropriate chemical resistant clothing.

Respiratory protection In case of insufficient ventilation, wear suitable respiratory equipment.

Thermal hazards Wear appropriate thermal protective clothing, when necessary.

General hygiene considerations Always observe good personal hygiene measures, such as washing after handling the material and before eating, drinking, and/or smoking. Routinely wash work clothing and protective equipment to remove contaminants.

9. Physical and chemical properties

Appearance

Physical state	Liquid.
Form	Liquid.
Color	Clear. Yellow green

Odor Chlorine.

Odor threshold Not available.

pH < 12

Melting point/freezing point Not available.

Initial boiling point and boiling range Not available.

Flash point Not available.

Evaporation rate Not available.

Flammability (solid, gas) Not available.

Upper/lower flammability or explosive limits

Flammability limit - lower (%) Not available.

Flammability limit - upper (%) Not available.

Explosive limit - lower (%) Not available.

Explosive limit - upper (%) Not available.

Vapor pressure 12.1 mm Hg estimated

Vapor density Not available.

Relative density Not available.

Solubility(ies)

Solubility (water) Not available.

Solubility (other) soluble

Partition coefficient (n-octanol/water) Not available.

Auto-ignition temperature	Not available.
Decomposition temperature	Not available.
Viscosity	Not available.
Other information	
Density	1.21 g/cm3 estimated
Solubility (other)	soluble
Specific gravity	1.17 estimated
10. Stability and reactivity	
Reactivity	The product is stable and non-reactive under normal conditions of use, storage and transport.
Chemical stability	Material is stable under normal conditions.
Possibility of hazardous reactions	Hazardous polymerization does not occur.
Conditions to avoid	Reacts violently with strong alkaline substances. This product may react with reducing agents. Do not mix with other chemicals. Contact with incompatible materials.
Incompatible materials	Incompatible with bases. Metals. Strong oxidizing agents. Water. Strong reducing agents.
Hazardous decomposition products	No hazardous decomposition products are known.

11. Toxicological information

Information on likely routes of exposure

Ingestion	Causes digestive tract burns.
Inhalation	Prolonged inhalation may be harmful. May cause irritation to the respiratory system.
Skin contact	Causes severe skin burns. Harmful in contact with skin.
Eye contact	Causes serious eye damage.

Symptoms related to the chemical and toxicological characteristics Burning pain and severe corrosive skin damage. Causes serious eye damage. Symptoms may include stinging, tearing, redness, swelling, and blurred vision. Permanent eye damage including blindness could result.

Information on toxicological effects

Acute toxicity	Harmful in contact with skin.	
Components	Species	Test Results

SODIUM HYDROXIDE (CAS 1310-73-2)

Acute

Oral

LD50	Rabbit	325 mg/kg
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Other

LD50	Mouse	40 mg/kg
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SODIUM HYPOCHLORITE (CAS 7681-52-9)

Acute

Dermal

LD50	Rabbit	> 10000 mg/kg
------	--------	---------------

Inhalation

LC50	Rat	> 5.25 mg/l/4h
------	-----	----------------

Oral

LD50	Mouse	880 mg/kg
------	-------	-----------

	Rat	8910 mg/kg
--	-----	------------

1100 mg/kg

* Estimates for product may be based on additional component data not shown.

Skin corrosion/irritation Causes severe skin burns and eye damage.

Serious eye damage/eye irritation Causes serious eye damage.

Respiratory or skin sensitization

Respiratory sensitization Not available.

Skin sensitization This product is not expected to cause skin sensitization.

Germ cell mutagenicity No data available to indicate product or any components present at greater than 0.1% are mutagenic or genotoxic.

Carcinogenicity This product is not considered to be a carcinogen by IARC, ACGIH, NTP, or OSHA.

IARC Monographs. Overall Evaluation of Carcinogenicity

SODIUM HYPOCHLORITE (CAS 7681-52-9)3 Not classifiable as to carcinogenicity to humans. US. OSHA
Specifically Regulated Substances (29 CFR 1910.1001-1050)

Not listed.

Reproductive toxicity	This product is not expected to cause reproductive or developmental effects.
Specific target organ toxicity - single exposure	Not classified.
Specific target organ toxicity - repeated exposure	Not classified.
Aspiration hazard	Not available.
Chronic effects	Prolonged inhalation may be harmful.

12. Ecological information

Ecotoxicity Because of the low pH of this product, it would be expected to produce significant ecotoxicity upon exposure to aquatic organisms and aquatic systems.

Components	Species	Test Results
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SODIUM HYPOCHLORITE (CAS 7681-52-9)

Aquatic

Acute

Crustacea	EC50	Water flea (Daphnia magna)	0.141 mg/l, 48 hours
Fish	EC50	Rainbow trout (Oncorhynchus mykiss)	0.2 mg/l, 96 hours

* Estimates for product may be based on additional component data not shown.

Persistence and degradability No data is available on the degradability of this product.

Bioaccumulative potential No data available.

Mobility in soil No data available.

Other adverse effects No other adverse environmental effects (e.g. ozone depletion, photochemical ozone creation potential, endocrine disruption, global warming potential) are expected from this component.

13. Disposal considerations

Disposal instructions	Collect and reclaim or dispose in sealed containers at licensed waste disposal site. This material and its container must be disposed of as hazardous waste. Do not allow this material to drain into sewers/water supplies. Do not contaminate ponds, waterways or ditches with chemical or used container. Dispose of contents/container in accordance with local/regional/national/international regulations.
Local disposal regulations	Dispose in accordance with all applicable regulations.
Hazardous waste code	The waste code should be assigned in discussion between the user, the producer and the waste disposal company.
Waste from residues / unused products	Dispose of in accordance with local regulations. Empty containers or liners may retain some product residues. This material and its container must be disposed of in a safe manner (see: Disposal instructions).
Contaminated packaging	Empty containers should be taken to an approved waste handling site for recycling or disposal. Since emptied containers may retain product residue, follow label warnings even after container is emptied.

14. Transport information

DOT

UN number	UN1791
UN proper shipping name	Hypochlorite solutions, MARINE POLLUTANT
Transport hazard class(es)	
Class	8
Subsidiary risk	-
Label(s)	8
Packing group	II
Environmental hazards	
Marine pollutant	Yes
Special precautions for user	Read safety instructions, SDS and emergency procedures before handling.
Special provisions	A7, B2, B15, IB2, IP5, N34, T7, TP2, TP24
Packaging exceptions	154
Packaging non bulk	202

Packaging bulk 242

IATA

UN number UN1791
UN proper shipping name Hypochlorite solution
Transport hazard class(es)
Class 8
Subsidiary risk Packing group
II

Environmental hazards No.

ERG Code 8L

Special precautions for user Read safety instructions, SDS and emergency procedures before handling.

Other information

Passenger and cargo aircraft Allowed.

Cargo aircraft only Allowed.

IMDG

UN number UN1791
UN proper shipping name HYPOCHLORITE SOLUTION, MARINE POLLUTANT
Transport hazard class(es)
Class 8
Subsidiary risk Packing group
II

Environmental hazards

Marine pollutant Yes

EmS F-A, S-B

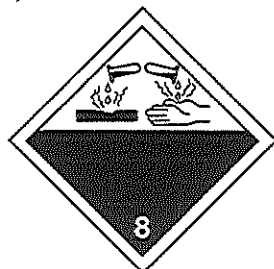
Special precautions for user Read safety instructions, SDS and emergency procedures before handling.

Transport in bulk according to Not
available. Annex II of MARPOL 73/78 and the
IBC Code

DOT



IATA; IMDG



Marine pollutant



15. Regulatory information

US federal regulations This product is a "Hazardous Chemical" as defined by the OSHA Hazard Communication Standard, 29 CFR 1910.1200.

TSCA Section 12(b) Export Notification (40 CFR 707, Subpt. D)

Not regulated.

CERCLA Hazardous Substance List (40 CFR 302.4)

SODIUM HYDROXIDE (CAS 1310-73-2) Listed.

SODIUM HYPOCHLORITE (CAS 7681-52-9) Listed.

SARA 304 Emergency release notification

Not regulated.

US. OSHA Specifically Regulated Substances (29 CFR 1910.1001-1050)

Not listed.

Superfund Amendments and Reauthorization Act of 1986 (SARA)

Hazard categories Immediate Hazard - Yes
Delayed Hazard - No
Fire Hazard - No
Pressure Hazard - No
Reactivity Hazard - No

SARA 302 Extremely hazardous substance No

SARA 311/312 Hazardous chemical No

SARA 313 (TRI reporting)
Not regulated.

Other federal regulations

Clean Air Act (CAA) Section 112 Hazardous Air Pollutants (HAPs) List

Not regulated.

Clean Air Act (CAA) Section 112(r) Accidental Release Prevention (40 CFR 68.130)

Not regulated.

Safe Drinking Water Act (SDWA) Not regulated.

US state regulations

US. Massachusetts RTK - Substance List

SODIUM HYDROXIDE (CAS 1310-73-2)

SODIUM HYPOCHLORITE (CAS 7681-52-9)

US. New Jersey Worker and Community Right-to-Know Act

Not regulated.

US. Pennsylvania RTK - Hazardous Substances

SODIUM HYDROXIDE (CAS 1310-73-2)

SODIUM HYPOCHLORITE (CAS 7681-52-9)

US. Rhode Island RTK

SODIUM HYDROXIDE (CAS 1310-73-2)

SODIUM HYPOCHLORITE (CAS 7681-52-9)

US. California Proposition 65

California Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): This material is not known to contain any chemicals currently listed as carcinogens or reproductive toxins.

International Inventories

Country(s) or region	Inventory name	On inventory (yes/no)*
Australia	Australian Inventory of Chemical Substances (AICS)	Yes
Canada	Domestic Substances List (DSL)	Yes
Country(s) or region	Inventory name	On inventory (yes/no)*
Canada	Non-Domestic Substances List (NDSL)	No
China	Inventory of Existing Chemical Substances in China (IECSC)	Yes
Europe	European Inventory of Existing Commercial Chemical Substances (EINECS)	Yes
Europe	European List of Notified Chemical Substances (ELINCS)	No
Japan	Inventory of Existing and New Chemical Substances (ENCS)	Yes
Korea	Existing Chemicals List (ECL)	Yes
New Zealand	New Zealand Inventory	Yes

Philippines	Philippine Inventory of Chemicals and Chemical Substances (PICCS)	Yes
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United States & Puerto Rico	Toxic Substances Control Act (TSCA) Inventory	Yes
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*A "Yes" indicates that all components of this product comply with the inventory requirements administered by the governing country(s)

A "No" indicates that one or more components of the product are not listed or exempt from listing on the inventory administered by the governing country(s).

16. Other information, including date of preparation or last revision

Issue date 12-04-2013

Version # 01

Disclaimer

Prepared by: ICC The Compliance Center Inc.

<http://www.thecompliancecenter.com>

Disclaimer

This Safety Data Sheet was prepared by ICC The Compliance Center Inc. using information provided by / obtained from FSTI Inc and CCOHS' Web Information Service. The information in the Safety Data Sheet is offered for your consideration and guidance when exposed to this product. ICC The Compliance Center Inc and FSTI Inc expressly disclaim all expressed or implied warranties and assume no responsibilities for the accuracy or completeness of the data contained herein. The data in this SDS does not apply to use with any other product or in any other process.

This Safety Data Sheet may not be changed, or altered in any way without the expressed knowledge and permission of ICC The Compliance Center Inc. and FSTI Inc



hereby grants

National Women's Business Enterprise Certification

to

FSTI, INC.

who has successfully met WBENC's standards as a Women's Business Enterprise (WBE).
This certification affirms the business is woman-owned, operated and controlled; and is valid through the date herein.

Certification Granted: November 8, 2017

Expiration Date: November 8, 2018

WBENC National Certification Number: WBE1702274

WBENC National WBE Certification was processed and validated by
Women's Business Council - Southwest, a WBENC Regional Partner Organization

Authorized by Debbie Hurst, President
Women's Business Council - Southwest

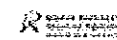
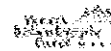


WOMEN'S
BUSINESS
COUNCIL
—
SOUTHWEST

NAICS: 424690, 484220
UNSPSC: 60104201



Equal Opportunity





GLENN HEGAR TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

The Texas Comptroller of Public Accounts (CPA) administers the Statewide Historically Underutilized Business (HUB) Program for the State of Texas, which includes certifying minority-, woman- and service disabled veteran-owned businesses as HUBs and facilitates the use of HUBs in state procurement and provides them with information on the state's procurement process. The CPA has established Memorandums of Agreement with other organizations that certify minority-, woman- and service disabled veteran-owned businesses that meet certification standards as defined by the CPA. The agreements allow for Texas-based minority-, woman- and service disabled veteran-owned businesses that are certified with one of our certification partners to become HUB certified through one convenient application process.

In accordance with the Memorandum of Agreement the CPA has established with the Women's Business Council - Southwest (WBCS), we are pleased to inform you that your company is now certified as a HUB. Your company's profile is listed in the State of Texas HUB Directory and may be viewed online at <https://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. Provided that your company continues to remain certified with the WBCS, and they determine that your company continues to meet HUB eligibility requirements, the attached HUB certificate is valid for the time period specified.

You must notify the WBCS in writing of any changes affecting your company's compliance with the HUB eligibility requirements, including changes in ownership, day-to-day management, control and/or principal place of business. Note: Any changes made to your company's information may require the WBCS and/or the HUB Program to re-evaluate your company's eligibility. Failure to remain certified with the WBCS, and/or failure to notify them of any changes affecting your company's compliance with HUB eligibility requirements, may result in the revocation of your company's certification.

Please visit our website at <http://comptroller.texas.gov/procurement/prog/hub/> and reference our publications (i.e. Grow Your Business pamphlet, HUB Brochure and Vendor Guide) that will provide you with additional information on state procurement resources that can increase your company's chances of doing business with the state.

Thank you for your participation in the HUB Program! If you have any questions, you may contact a HUB Program representative at 512-463-5872 or toll-free in Texas at 1-888-863-5881.

Texas Historically Underutilized Business (HUB) Certificate



Certificate/VID Number:	1742891014900
File/Vendor Number:	34863
Approval Date:	08-NOV-2017
Scheduled Expiration Date:	08-NOV-2018

In accordance with the Memorandum of Agreement between the
Women's Business Council - Southwest (WBCS)
and the Texas Comptroller of Public Accounts (CPA), the CPA hereby certifies that

FSTI, INC

has successfully met the established requirements of the State of Texas Historically Underutilized Business (HUB) Program to be recognized as a HUB. This certificate, printed 11-DEC-2017, supersedes any registration and certificate previously issued by the HUB Program. If there are any changes regarding the information (i.e., business structure, ownership, day-to-day management, operational control, addresses, phone and fax numbers or authorized signatures) provided in the submission of the business' application for registration/certification into the WBCS's program, you must immediately (within 30 days of such changes) notify the WBCS's program in writing. The CPA reserves the right to conduct a compliance review at any time to confirm HUB eligibility. HUB certification may be suspended or revoked upon findings of ineligibility. If your firm ceases to remain certified in the WBCS's program, you must apply and become certified through the State of Texas HUB program to maintain your HUB certification.

*Laura Cagle-Hinojosa, Statewide HUB Program Manager
Statewide Support Services Division*

Note: In order for State agencies and institutions of higher education (universities) to be credited for utilizing this business as a HUB, they must award payment under the Certificate/VID Number identified above. Agencies, universities and prime contractors are encouraged to verify the company's HUB certification prior to issuing a notice of award by accessing the Internet (<https://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>) or by contacting the HUB Program at 512-463-5872 or toll-free in Texas at 1-888-863-5881.

GOAL DETERMINATION REQUEST FORM

Buyer Name/Phone	Georgia Billela/4-2939	PM Name/Phone	Juaquin Ordonez/2-0252
Sponsor/User Dept.	Austin Water/2200	Sponsor Name/Phone	Lydia Torres/2-0329
Solicitation No	IFB 2200 GLB0070	Project Name	Sodium Hypochlorite
Contract Amount	3,364,000 (672,800 per year)	Ad Date (if applicable)	2/5/18 Tentively
Procurement Type			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input type="checkbox"/> IFB – IDIQ <input type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Critical Business Need <input type="checkbox"/> Sole Source* <input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – JOC <input type="checkbox"/> PS – Project Specific <input checked="" type="checkbox"/> Commodities/Goods <input type="checkbox"/> Interlocal Agreement <input type="checkbox"/> AD – Design Build <input type="checkbox"/> IFB – Construction <input type="checkbox"/> PS – Rotation List <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Ratification			
Provide Project Description**			
The City of Austin (City) seeks bids in response to this solicitation to establish a contract(s) with a qualified Vendor (Contractor) who can provide Sodium Hypochlorite. The Sodium Hypochlorite will be used at Austin Water facilities in the disinfection treatment processes and used for filament bacteria control.			
Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.			
IFB 2200 STA1112 no goals but subcontracted after contract was in place due to selling a portion of the business off. IFB 2200 STA1104 no goals and no subcontracting			
List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)			
2450580 100%			
Georgia Billela		1/19/2018	
Buyer Confirmation		Date	

* Sole Source must include Certificate of Exemption

**Project Description not required for Sole Source

FOR SMBR USE ONLY		
Date Received	1/19/2018	Date Assigned to BDC
1/22/2018		
In accordance with Chapter 2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:		
<input type="checkbox"/> Goals	% MBE	% WBE
<input type="checkbox"/> Subgoals	% African American	% Hispanic
	% Asian/Native American	% WBE

GOAL DETERMINATION REQUEST FORM

<input type="checkbox"/> Exempt from MBE/WBE Procurement Program	<input checked="" type="checkbox"/> No Goals
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GOAL DETERMINATION REQUEST FORM

This determination is based upon the following:

- | | |
|--|---|
| <input type="checkbox"/> Insufficient availability of M/WBEs | <input type="checkbox"/> No availability of M/WBEs |
| <input type="checkbox"/> Insufficient subcontracting opportunities | <input checked="" type="checkbox"/> No subcontracting opportunities |
| <input type="checkbox"/> Sufficient availability of M/WBEs | <input type="checkbox"/> Sufficient subcontracting opportunities |
| <input type="checkbox"/> Sole Source | <input type="checkbox"/> Other |

If Other was selected, provide reasoning:

Commodity purchase

MBE/WBE/DBE Availability

No firms available

Subcontracting Opportunities Identified

None

Cynthia Van Maanen

SMBR Staff

Signature/ Date

SMBR Director or Designee

Date

Returned to/ Date: