



Amendment No. 2
to
Contract No. NA180000116
for
Lead Abatement at APD Training Academy
between
Metals Treatment Technologies, LLC (MT2 LLC)
and the
City of Austin

- 1.0 The City hereby exercises this Unilateral Extension Option for the subject contract. This extension option will be effective May 24, 2020 through May 23, 2021. Two options will remain.
- 2.0 The total contract amount is increased by \$125,000.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 05/24/2018 – 05/23/2019	\$125,000.00	\$125,000.00
Amendment No. 1: Option 1 – Extension 05/24/2019 – 05/23/2020	\$125,000.00	\$250,000.00
Amendment No. 2: Option 2 – Extension 05/24/2020 – 05/23/2021	\$125,000.00	\$375,000.00

- 3.0 By signing this Amendment, the City of Austin confirms 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.
- 4.0 All other terms and conditions remain the same.

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

Printed Name: Erin D'Vincent

Authorized Representative

Sign/Date: **Erin D'Vincent**
Digitally signed by Erin D'Vincent
DN: cn=Erin D'Vincent, o=City of Austin, ou=Purchasing
Office_email=erin.dvincent@austintexas.gov, c=US
Date: 2020.05.08 11:25:50 -05'00'

Erin D'Vincent
Procurement Supervisor
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 1
to
Contract No. NA180000116
for
Lead Abatement at APD Training Academy
between
Metals Treatment Technologies, LLC (MT2 LLC)
and the
City of Austin

- 1.0 The City hereby exercises this Unilateral Extension Option for the subject contract. This extension option will be effective May 24, 2019 through May 23, 2020. Three options will remain.
- 2.0 The total contract amount is increased by \$125,000.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 05/24/2018 – 05/23/2019	\$125,000.00	\$125,000.00
Amendment No. 1: Option 1 – Extension 05/24/2019 – 05/23/2020	\$125,000.00	\$250,000.00

- 3.0 By signing this Amendment, the City of Austin confirms 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.
- 4.0 All other terms and conditions remain the same.

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

Printed Name: Matthew Duree
Authorized Representative

Sign/Date: [Signature]
6-3-19

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

**CONTRACT BETWEEN THE CITY OF AUSTIN (“City”)
AND
Metals Treatment Technologies, LLC (MT2 LLC) (“Contractor”)
for
Lead Abatement at APD Training Academy
MA 8700 NA180000116**

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 MT2 LLC having offices at 14045 W 66th Avenue, Arvada, CO 80004 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 RFP 8700 EAD0135.

1.1 This Contract is composed of the following documents:

- 1.1.1 This Contract
- 1.1.2 The City’s Solicitation, Request for Proposal (RFP), 8700 EAD0135 including all documents incorporated by reference
- 1.1.3 MT2 LLC’s Offer, dated 3/5/18, including subsequent clarifications

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

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

1.3 Term of Contract. The Contract will be in effect for an initial term of twelve (12) months and may be extended thereafter for up to four (4) 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 \$125,000 for the initial Contract term and \$125,000 for each extension option, for a total contract amount Not-to-Exceed \$625,000. Payment shall be made upon successful completion of services 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. 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.

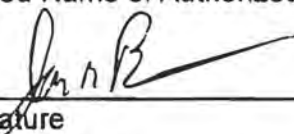
- 1.6.1 Exhibit A – Best and Final Offer

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.

**Metals Treatment Technologies, LLC
(MT2 LLC)**

James M Barthel
Printed Name of Authorized Person


Signature

CEO
Title:

5/22/18
Date:

CITY OF AUSTIN

Erin D'Vincent
Printed Name of Authorized Person


Signature

Procurement Specialist IV
Title:

5.24.18
Date:



SUBMITTAL:

**CLARIFICATIONS AND BEST AND FINAL OFFER OF RFP
8700 EAD0135, LEAD REMOVAL AND CLEANING FOR
APD TRAINING ACADEMY**

PREPARED FOR:

**CITY OF AUSTIN
PURCHASING OFFICE
P.O. BOX 1088
AUSTIN, TX 78767**

SUBMITTED BY:

**MT2, LLC
14045 W 66TH AVE
ARVADA, CO 80004
303-456-6977 888-435-6645
WWW.MT2.COM**



MARCH 27, 2018



PROPOSAL:

**LEAD REMOVAL AND
CLEANING FOR APD TRAINING ACADEMY**

PREPARED FOR:

**CITY OF AUSTIN, TEXAS
MUNICIPAL BUILDING, RM 308,
124 W 8TH STREET
AUSTIN, TX 78701**

SUBMITTED BY:

**MT2, LLC
14045 W 66TH AVE
ARVADA, CO 80004
303-456-6977 888-435-6645
WWW.MT2.COM**



MARCH 6, 2018

Table of Contents

1.0 TAB 1 – CITY OF AUSTIN PURCHASING OFFICE DOCUMENTS:	1
1.1 Signed Offer Sheet	1
1.2 Section 0605 Local Business Presence Identification Form	1
1.3 Section 0630 Exceptions	1
1.4 Section 0800 Non-Discrimination and Non-Retaliation Certification	1
1.5 Section 0815 Living Wages Contractor Certification	1
1.6 Section 0835 Nonresident Bidder Provisions	1
1.7 Section 0840 Service-Disabled Veteran Business Enterprise	1
1.8 Section 0900 Subcontracting/Sub-consulting Utilization Form	1
1.9 Section 0905 Subcontracting/Sub-consulting Utilization Plan	1
1.10 Signed Addenda	1
2.0 TAB 2 – AUTHORIZED NEGOTIATOR:	20
3.0 TAB 3 – REFERENCES:	21
4.0 TAB 4 – EXECUTIVE SUMMARY:	23
4.1 Company History	23
4.2 Indoor Range Services	23
4.3 Why MT2	23
4.4 Working with the City of Austin	24
5.0 TAB 5 – PERSONNEL:	25
5.1 MT2 Key Personnel Roles	25
6.0 TAB 6 – PROPOSED SOLUTION:	27
6.1 Planning, Preparation, and Mobilization	27
6.2 Lead & Brass Removal	27
6.3 Range Cleaning Scope	27
6.4 Filter Change	28
6.5 Other Range Maintenance Items:	28
6.6 Cleaning Procedures	28
6.6.1 HEPA Vacuum Cleaning	28
6.6.2 Wet Cleaning	29
6.6.3 Mopping the floor	29
6.6.4 Pressure Washing	29
6.7 RCRA Hazardous Waste Management and Disposal	30
6.8 Alternate Recommendation	30
6.9 Certificates	31

1.0 TAB 1 – CITY OF AUSTIN PURCHASING OFFICE DOCUMENTS:

- 1.1 *Signed Offer Sheet***
- 1.2 *Section 0605 Local Business Presence Identification Form***
- 1.3 *Section 0630 Exceptions***
- 1.4 *Section 0800 Non-Discrimination and Non-Retaliation Certification***
- 1.5 *Section 0815 Living Wages Contractor Certification***
- 1.6 *Section 0835 Nonresident Bidder Provisions***
- 1.7 *Section 0840 Service-Disabled Veteran Business Enterprise***
- 1.8 *Section 0900 Subcontracting/Sub-consulting Utilization Form***
- 1.9 *Section 0905 Subcontracting/Sub-consulting Utilization Plan***
- 1.10 *Signed Addenda***

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

SECTION NO.	TITLE	PAGES
0100	STANDARD PURCHASE DEFINITIONS	*
0200	STANDARD SOLICITATION INSTRUCTIONS	*
0300	STANDARD PURCHASE TERMS AND CONDITIONS	*
0400	SUPPLEMENTAL PURCHASE PROVISIONS	7
0500	SCOPE OF WORK	4
0600	PROPOSAL PREPARATION INSTRUCTIONS & EVALUATION FACTORS	3
0605	LOCAL BUSINESS PRESENCE IDENTIFICATION FORM – Complete and return	2
0610	RATE SHEET	1
0630	EXCEPTIONS	1
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	*
0815	LIVING WAGES CONTRACTOR CERTIFICATION–Complete and return	1
0835	NONRESIDENT BIDDER PROVISIONS – Complete and return	1
0840	SERVICE-DISABLED VETERAN BUSINESS ENTERPRISE – Complete and 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: Metals Treatment Technologies, LLC

Company Address: 14045 W 66th Ave

City, State, Zip: Arvada, CO 80004

Federal Tax ID No. _____

Printed Name of Officer or Authorized Representative: James M Baitel

Title: CEO

Signature of Officer or Authorized Representative: _____



Date: 3/5/18

Email Address: info@mt2.com

Phone Number: 303-456-6977

*** Proposal response 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>

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

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

15. FINAL PAYMENT AND CLOSE-OUT:

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

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

17. AUDITS and RECORDS:

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

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

18. SUBCONTRACTORS:

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

19. WARRANTY-PRICE:

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

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

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

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

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.

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

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

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

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

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

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.

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

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.

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

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

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

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.

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

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

CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS

The following Supplemental Purchasing Provisions apply to this solicitation:

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

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by email to Erin.DVincent@austintexas.gov no later than 5 PM, seven (7) business days before the solicitation 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:
 - (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.

CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS

- (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. **Lead Pollution/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 lead pollution liability policy or lead 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 lead pollution, and shall provide "occurrence" coverage without a sunset clause. The policy shall provide 30 day Notice of Cancellation and 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.
- 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 twelve (12) months. The Contract may be extended beyond the initial term for up to four (4) 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

CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS

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 (12) 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. **INVOICES and PAYMENT:** (reference paragraphs 12 and 13 in Section 0300)
- A. Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed or emailed to the below address:

	City of Austin
Department	Austin Police Department
Attn:	Accounts Payable
Address	P.O. Box 1629
City, State Zip Code	Austin, TX 78767
Email	APDAccountsPayable@austintexas.gov

- B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.
6. **HAZARDOUS MATERIALS:**
- A. If this Solicitation involves hazardous materials, the Offeror shall furnish with the Offer Material Safety Data Sheets (MSDS), (OSHA Form 20), on all chemicals and hazardous materials specifying the generic and trade name of product, product specification, and full hazard information including receiving and storage hazards. Instructions, special equipment needed for handling, information on approved containers, and instructions for the disposal of the material are also required.
 - B. Failure to submit the MSDS as part of the Offer may subject the Offer to disqualification from consideration for award.

CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS

- C. The MSDS, instructions and information required in paragraph "A" must be included with each shipment under the contract.

7. LIVING WAGES:

The City's Living Wage Program, Rule R161-17.14, is located at:

<http://www.austintexas.gov/edims/document.cfm?id=277854>

- A. The minimum wage required for all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract is \$14.00 per hour, unless Published Wage Rates are included in this solicitation. In addition, the City may stipulate higher wage rates in certain solicitations in order to assure quality and continuity of service.
- B. The City requires Contractors submitting Offers on this Contract to provide a certification (**see the Living Wages Contractor Certification included in the Solicitation**) with their Offer certifying that all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$14.00 per hour. The certification shall include a list of all Contractor Employees (and all tiers of Subcontracting) directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.
- C. The Contractor shall maintain throughout the term of the resultant contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA).
- D. The Contractor shall provide to the Department's assigned Contract Manager with the first invoice, individual Employee Certifications for all Contractor Employees (and all tiers of Subcontracting) directly assigned to the contract. The City reserves the right to request individual Employee Certifications at any time during the contract term. Employee Certifications shall be signed by each Contractor Employee (and all tiers of Subcontracting) directly assigned to the contract. The Employee Certification form is available on-line at https://www.austintexas.gov/financeonline/vendor_connection/index.cfm.
- E. Contractor shall submit employee certifications for Contractor Employees (and all tiers of Subcontracting) annually on the anniversary date of contract award with the respective invoice to verify that employees are paid the Living Wage throughout the term of the contract. The Employee Certification Forms shall be submitted for Contractor Employees (and all tiers of Subcontracting) added to the contract and/or to report any employee changes as they occur.
- F. The Department's assigned Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records required in paragraph C above to verify compliance with this provision.

8. 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.

CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS

- 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>

9. WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):

- A. Contractors are required to obtain a certified criminal background report with fingerprinting (referred to as the "report") for all persons performing on the contract, including all Contractor, Subcontractor, and Supplier personnel (for convenience referred to as "Contractor's personnel").
- B. The report may be obtained by reporting to one of the below governmental entities, submitting to fingerprinting and requesting the report [requestors may anticipate a two-week delay for State reports and up to a four to six week delay for receipt of a Federal report.].
 - i. Texas Department of Public Safety for any person currently residing in the State of Texas and having a valid Texas driver's license or photo ID card;
 - ii. The appropriate governmental agency from either the U.S. state or foreign nation in which the person resides and holds either a valid U.S. state-issued or foreign national driver's license or photo ID card; or
 - iii. A Federal Agency. A current Federal security clearance obtained from and certified by a Federal agency may be substituted.
- C. Contractor shall obtain the reports at least 30 days prior to any onsite work commencement. Contractor also shall attach to each report the project name, Contractor's personnel name(s), current address(es), and a copy of the U.S. state-issued or foreign national driver's license or photo ID card.
- D. Contractor shall provide the City a Certified Criminal Background Report affirming that Contractor has conducted required security screening of Contractor's personnel to determine those appropriate for execution of the work and for presence on the City's property. A list of all Contractor Personnel requiring access to the City's site shall be attached to the affidavit.
- E. Upon receipt by the City of Contractor's affidavit described in (D) above and the list of the Contractor's personnel, the City will provide each of Contractor's personnel a contractor ID badge that is required for access to City property that shall be worn at all times by Contractor's personnel during the execution of the work.
- F. The City reserves the right to deny an ID badge to any Contractor personnel for reasonable cause, including failure of a Criminal History background check. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor's reports. 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) calendar days of the receipt of notification of denial.
- G. Contractor's personnel will be required to wear the ID badge at all times while on the work site. Failure to wear or produce the ID badge may be cause for removal of an individual from the work site, without regard to Contractor's schedule. Lost ID badges shall be reported to the City's Contract Manager. Contractor shall reimburse the City for all costs incurred in providing additional ID badges to Contractor Personnel.

CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS

- H. ID badges to enter and/or work on the City property may be revoked by the City at any time. ID badges must be returned to the City at the time of project completion and acceptance or upon removal of an individual from the work site.
- I. Contractor is not required to obtain reports for delivery personnel, including but not limited to FedEx, UPS, Roadway, or other materials delivery persons, however all delivery personnel must present company/employer-issued photo ID and be accompanied by at least one of Contractor's personnel at all times while at the work site.
- J. The Contractor shall retain the reports and make them available for audit by the City during regular business hours (reference paragraph 17 in Section 0300, entitled Right to Audit).

10. **ECONOMIC PRICE ADJUSTMENT:**

- A. **Price Adjustments:** Prices shown in this Contract shall remain firm for the first twelve (12) months of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed fifteen percent (15%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.
- B. **Effective Date:** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.
- C. **Adjustments:** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.
- D. **Indexes:** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.
 - i. The following definitions apply:
 - (1) **Base Period:** Month and year of the original contracted price (the solicitation close date).
 - (2) **Base Price:** Initial price quoted, proposed and/or contracted per unit of measure.
 - (3) **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
 - (4) **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.
 - (5) **Weight %:** The percent of the Base Price subject to adjustment based on an index change.
 - ii. **Adjustment-Request Review:** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
 - (1) Utilize final Compilation data instead of Preliminary data
 - (2) If the referenced index is no longer available shift up to the next higher category index.
 - iii. **Index Identification:** Complete table as they may apply.

CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS

Weight of Base Price: 100%	
Database Name: Employment Cost Index	
Series ID: CIU1030000000000I	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: United States	
Description of Series ID: Total benefits for All Civilian workers in All industries and occupations	
This Index shall apply to the following items of the Rate Sheet: 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.

11. **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.

12. **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:

Dan Dellemonache

512-974-5057

Daniel.Dellemonache@austintexas.gov

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

Scope of Work
SOLICITATION NO. RFP 8700 EAD0135
Description: Lead Removal and Cleaning for APD Training Academy

1.0 Purpose

The City of Austin Police Department, hereinafter referred to as APD, is seeking a contract to provide monthly cleaning and lead abatement services at the APD firing range located at 4800 Shaw Lane, Austin, Texas 78744. In addition to cleaning and lead abatement services, APD has a need to dispose and recycle all spent lead and brass.

The successful proposer shall be able to properly and thoroughly clean a 178 foot long range, wall-to-wall, including the space behind the bullet traps. The cleaning activities shall be performed based upon all federal, state, and local regulations regarding the safe disposal of hazardous materials. The successful proposer shall leave the firing range in a state that is safe for occupancy, and minimal risk to lead exposure.

2.0 Contractor's Responsibilities

- 2.1 The Contractor shall clean the lead contaminated areas of the weapons range including all lanes and buckets. The APD firing range consists of one large range and one small range. Both ranges are required to be cleaned and decontaminated.
- 2.2 The Contractor shall perform work in accordance with all applicable codes and trade practices, including, but not limited to, testing, handling and disposal permits.
- 2.3 The Contractor shall perform services on all range floors, bullet traps, firing lanes and weapon cleaning rooms/spaces.
- 2.4 The Contractor shall remove and install all filters which will be provided by APD.
- 2.5 The Contractor shall collect all spent lead and brass from both ranges.
- 2.6 The Contractor shall clean all door mats and receptacles containing lead contaminated items.
- 2.7 The Contractor shall remove lead from the collection buckets. There are 41 lanes with a total of 162 buckets (additional lanes and buckets may be added as necessary).
- 2.8 The Contractor shall remove the lead from the dust containment unit located at the APD range facility. If the Contractor uses the metal collection container to remove the dust, the Contractor shall be responsible for replacing the container with an empty one.
- 2.9 The Contractor shall inspect and vacuum the area around the lead containment system and bullet trap area and all other accumulation areas on both ranges once the lead removal has been completed.
- 2.10 The Contractor shall provide proof of Lead Awareness and Abatement Training for all personnel performing services under this contract. Contractor personnel shall be equipped with all necessary personal protective equipment to perform lead

abatement/removal of firing range.

- 2.11 The Contractor shall be responsible for meeting all Federal: laws, ordinances and regulations; State: laws, ordinance and regulations; County: laws, ordinances and regulations; and City: laws, ordinances, and regulations for safety of people, environment, and property. This includes, but is not limited to, all Federal, State, County, and City Agencies, Administrations and Commissions such as the Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA), and the Texas Commission on Environmental Quality (TCEQ). In the event any law, regulation or ordinance becomes effective after the start of this Agreement, the Vendor is required to comply with new policy. Any mandates requiring the City to comply with new guidelines will also require the Vendor to comply.

2.11.1 Contractor shall perform all work in compliance with the following laws and regulations:

2.11.1.1 U.S. Occupational Safety and Health Administration (OSHA) worker exposure regulation for lead (29 CFR 1926.62, 1910.1025)

2.11.1.2 Resource Conservation and Recovery Act (Pub. L. 113-185 42 USC § 6903) pertaining to special waste handling

2.11.1.3 Texas Administrative Code (Title 30, Chapter 335) on solid waste handling

- 2.12 The Contractor shall clean all hard surfaces, as well as work area, using proper equipment and shall remove lead contaminates from APD premises and dispose of or recycle per all applicable EPA, DHS, and OSHA standards and regulations.

2.12.1 Hard surfaces include the top sides of baffles, the top of the bullet trap behind the ranges, stanchions, the bucket collection holders, and the floors behind the bullet trap.

- 2.13 The Contractor shall inspect the top of each collection canister to see that it is firmly seated against the gasket and cannot leak out lead dust. If necessary, tighten the clamping nuts on the appropriate side of the canister to pull the canister up firmly, but not too tight, against the gasket. The Contractor shall be required to record lead canister levels upon inspection.

- 2.14 The Contractor shall report if there is little to no lead accumulation in the canisters. These findings shall be reported to the Range Sergeant or his designee.

- 2.15 After inspection, if there is little to no lead level change in the canister then the Contractor shall inspect the chamber. If the Contractor determines there is a lead clog at the base of the chamber then the Contractor shall remove all the lead material causing the clog.

- 2.16 The Contractor shall furnish and provide all equipment, materials, tools, safety equipment and supplies, filters and parts for Contractor owned equipment, transportation, handling, storage, labor, and supervision required for proper execution of this contract.

2.16.1 Failure to provide suitable equipment for the performance of this contract could be grounds for the City to terminate the contract.

- 2.17 The Contractor shall submit a current dated hazmat or environmental cleaning license with their response.
- 2.18 Any Contractor personnel who will be working at the APD Training Academy Range must undergo a criminal background check, performed by APD, prior to working on premises.
- 2.19 The Contractor shall have at least three (3) years experience in lead removal/abatement with firing ranges.
- 2.20 The Contractor shall collect all lead and brass from firing ranges and provide.
- 2.21 The Contractor shall be responsible for sorting lead and brass.
- 2.22 The Contractor shall provide the proper containers for both lead and brass with each pick up.
- 2.23 The Contractor shall deliver empty 50 gallon drums on an as needed basis.
- 2.24 The Contractor shall pick up full 50 gallon drums within 72 hours after being notified they are ready for pick up.

3.0 **City's Responsibilities**

- 3.1 APD shall provide outlets necessary to power all equipment.
- 3.2 APD shall provide all filters that require replacement.
- 3.3 APD shall close down each range for a maximum of 8 hours per range for the completion of the described work.
- 3.4 APD shall determine the acceptability of all work performed based on requirements herein defined under the contract specifications in evaluating services.
 - 3.4.1 The Range Sergeant or designee will sign off on a completed task list.
- 3.5 If services are not acceptable, the Contractor shall be required to visit the facility and review and correct all problem areas within 24 hours of notification at no additional cost to the City.

4.0 **Deliverables/Milestones**

Deliverables/Milestones	Description	Timeline (due/completion date, reference date, or frequency)	Performance Measure/ Acceptance Criteria	Contract Reference/ Section
Contractor shall provide lead abatement/removal services	Abatement/removal services should take place during normal business hours.	Monthly	City acceptance	2.0

Contractor shall collect excess lead and brass	The Contractor shall collect lead and brass from range.	Monthly	City acceptance	2.20
APD shall close down each range	APD shall close down each range for a maximum of 8 hours for cleaning to take place.	Monthly	APD closes range	3.3
APD shall determine acceptability of work	The range Sergeant or designee will sign off on a completed task list.	Monthly	City acceptance	3.4

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

SUBCONTRACTOR(S):

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

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

SUBCONTRACTOR(S):

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



PRICE PROPOSAL

Pricing is valid for 180 days



**CITY OF AUSTIN
PURCHASING OFFICE
EXCEPTIONS**

Solicitation Number: RFP EAD0135

The City will presume that the Offeror is in agreement with all sections of the solicitation unless the Offeror takes specific exception as indicated below. Complete the exception information indicating each exception taken, provide alternative language, and justify the alternative language. Copies of this form may be utilized if additional pages are needed.

Failure to agree to the standard contract terms may result in the City choosing to move forward with an award of a contract to the next best Offeror.

The City, at its sole discretion, may negotiate exceptions that do not result in material deviations from the sections contained in the solicitation documents. Material deviations as determined by the City may result in the City deeming the Offer non-responsive. The Offeror that is awarded the contract shall be required to sign the contract with the provisions accepted or negotiated.

Indicate:

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

Page Number	Section Number	Section Description
-------------	----------------	---------------------

Alternative Language:

Justification:

No exceptions

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 5th day of March, 2018

CONTRACTOR

Authorized
Signature

Title

Metals Treatment Technologies, LLC



James M Barthel, CEO

Section 0815: Living Wages Contractor Certification

Pursuant to the Living Wages provision (reference Section 0400, Supplemental Purchase Provisions) the Contractor is required to pay to all employees of the Prime Contractor and all tiers of subcontractors directly assigned to this City contract a minimum Living Wage equal to or greater than \$14.00 per hour.

- (1) The below listed individuals are all known employees of the Prime Contractor and its subcontractors who are directly assigned to this contract, and all are compensated at wage rates equal to or greater than \$14.00 per hour:

Employee Name	Employer	Prime or Sub	Your Normal Rate	Employee Job Title
MT2 agrees to pay all employees that are assigned to this contract (if awarded) equal or greater to the minimum living wage.				

- (2) All future employees of both the Prime Contractor and all tiers of subcontractors directly assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$14.00 per hour.
- (3) Our firm will not retaliate against any employee of either the Prime Contractor or any tier of subcontractors claiming non-compliance with the Living Wage provision.

A Prime Contractor or subcontractor that violates this Living Wage provision shall pay each of its affected employees the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision by either the Prime Contractor or any tier of subcontractor, or fraudulent statements made on this certification, may result in termination of this Contract for Cause, subject the violating firm to possible suspension or debarment, or result in legal action.

I hereby certify that all the listed employees of both the Prime Contractor and all tiers of subcontractors who are directly assigned to this contract are paid a minimum Living Wage equal to or greater than \$14.00 per hour.

Contractor's Name: Metals Treatment Technologies, LLC

Signature of Officer
or Authorized
Representative:



Date: 3/5/18

Printed Name:

James M Barthel

Title

CEO

Section 0835: Non-Resident Bidder Provisions

Company Name Metals Treatment Technologies, LLC

- 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: (2) Nonresident 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: Colorado

- 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 0840, Service-Disabled Veteran Business Enterprise Preference

Offeror Name
[OFFEROR NAME] Metals Treatment Technologies, LLC

Additional Solicitation Instructions.

- ☒ By checking this box, Offeror states they are NOT a certified Service-Disabled Veteran Business Enterprise seeking to claim preference points under the City of Austin's SDVBE Program.
- Offerors seeking to claim the Service-Disabled Veteran Business Enterprise (SDVBE) preference shall be certified **under one of the two following scenarios**. Offerors shall check one of the following boxes, input the data in the applicable table below and include this completed form in their Proposal.
 - ☐ **HUB/SV**. Offeror is certified as a Service-Disabled Veteran (SV) Historically Underutilized Business (HUB) by the Texas State Comptroller of Public Accounts.

Texas State HUB/SV Certification	
13-Digit Vendor ID (VID)	
HUB/SV Issue Date	
HUB/SV Expiration Date	

- ☐ **HUB/OTHER + Federal SDVOSB**. Offeror is certified by the Texas State Comptroller of Public Accounts as a Historically Underutilized Business in a HUB Eligibility Category other than Service-Disabled Veteran (SV) AND is verified by the US Veterans Administration as a Service-Disabled Veteran-Owned Small Business (SDVOSB). **Texas HUB Eligibility Categories:** HUB/BL (Black), HUB/AS (Asian), HUB/HI (Hispanic), HUB/AI (Native American), or HUB/WO (Women Owned).

Texas State HUB/OTHER Certification	
13-Digit Vendor ID (VID)	
HUB Eligibility Category	
HUB Issue Date	
HUB Expiration Date	

Federal SDVOSB Verification	
9-Digit DUNS	
SDVOSB Issue Date	
SDVOSB Expiration Date	

- Offeror Identity.** The Offeror submitting the Proposal shall be the same entity that is certified by the Texas State Comptroller of Public Accounts, AND if applicable as verified by the US Veterans Administration.
- Certification Status.** Offeror's certification(s) must be active on or before the Solicitation's due date for Proposals and shall not expire prior to the award and execution of any resulting contract.
- Confirmation of Certification(s).** Upon receipt of this completed form, the City will confirm the Offeror's certification(s): State: <https://mycpa.cpa.state.tx.us/tpasscmblsearch>, Federal: <https://www.vip.vetbiz.gov/>. The City will direct any questions concerning an Offeror's State or Federal certification status to the Offeror's contact person as designated on the Offer Form of their Proposal.
- Misrepresentation.** If the City determines that the Offeror requesting this preference is not certified by the State or Federal government if applicable, the Offeror will not receive the preference points. If the City determines that this misrepresentation was intentional, the City may also find the Offeror not responsible and may report the Offeror to the Texas State Comptroller of Public Accounts or if applicable to the US Veterans Administration. If the misrepresentation is discovered after contract award, the City reserves the right to void the contract.

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:

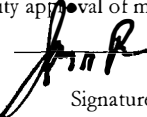
- a.) Offerors who do not intend to use Subcontractors shall check the "NO" box and follow the corresponding instructions.
b.) Offerors who intend to use Subcontractors shall check the applicable "YES" box and follow the instructions. **Offers that do not include the following required documents shall 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	Metals Treatment Technologies, LLC		
City Vendor ID Code	VS0000003785		
Physical Address	14045 W 66th Ave		
City, State Zip	Arvada, CO 80004		
Phone Number	303-456-6977	Email Address	info@mt2.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		
<p>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.</p> <p><u>James M Barthel</u> <u></u> 3/5/18</p> <p>Name and Title of Authorized Representative (Print or Type) Signature/Date</p>			

N/A

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.

- ☐ **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.

(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
REQUEST FOR PROPOSAL
LEAD REMOVAL AND CLEANING FOR APD TRAINING ACADEMY
CITY OF AUSTIN, TEXAS**

RFP 8700 EAD0135

Addendum No: 1

Date of Addendum: February 13, 2018

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

1.0 Questions and Answers.

(Q1) Who will provide fingerprinting services for the background check of vendors employees?

(A1) The awarded Contractor will be required to complete a background check and fingerprinting at APD headquarters. They will require an appointment.

(Q2) Does this solicitation have mandatory subcontracting?

(A2) No.

(Q3) Does the APD Training Academy have a general compliance monitoring plan or monitoring days?

(A3) No. The City does not have a quantifiable number that the building must be cleaned too. On some occasions, the City's Public Works Department will come monitor cleaning but there are no set monitoring days.

(Q4) Does drainage occur leading the contaminated water outside the building?

(A4) The APD Training Facility has a leak trap behind the building. If drainage does occur, the Contractor only needs to clean what is inside the building, they do not need to clean outside drainage.

(Q5) How long can the facility be shut down for cleaning?

(A5) The Contractor can have a maximum of 8 hours per range. Weekends are not staffed so cleaning must occur during the week.

(Q6) What is expected to be cleaned?

(A6) In addition to the items listed in Section 0500 of Work, all of 2.0, the City expects the Contractor to clean from the back wall to the bullet stops and all the way to the side walls. The Contractor shall also clean behind the bullet traps and the steel portion of the ceiling. The building acoustic baffles do not need to be cleaned by the Contractor.

(Q7) Is there a current Contractor cleaning the range?

(A7) There has not been a Contractor cleaning the range since last August.

(Q8) Is the Contractor expected to clean the movable wooden walls?

(A8) The City does not expect the Contractor to clean the movable wooden walls. When the wooden walls are set up for special training, the Contractor does not need to clean the area they are covering. The Contractor shall clean the area in front of and behind the wooden walls.

(Q9) Does the City provide power?

(A9) There are outlets at the ends of each range.

(Q10) What types of guns are used at the facility?

(A10) Mainly hand guns, rifles and shotguns.

(Q11) Are any of the rounds frangible?

(A11) The City's SWAT team occasionally uses frangible rounds.

(Q12) What capacity does the dust containment unit possess?

(A12) The dust containment unit has two 55-gallon drums to hold the powered lead.



(Q13) Is the Contractor required to change the filters of the dust containment unit?

(A13) Yes, but the City will provide the filter.

(Q14) Is the Contractor required to empty and replace the dust buckets behind the bullet trap?

(A14) Yes.. If the buckets are in good shape the back rooms stay relatively clean. The Contractor shall make sure the buckets are put back correctly so they do not leak. Each bucket has a washer that keeps the bucket in place. If the washer is not secured, the bucket will tip and spill lead.

(Q15) Does the City typically store items in the back rooms (area behind the bullet traps)?

(A15) The City tries not to leave items in the back rooms. The items in the back room are typically extra buckets and brackets.

(Q16) Does the City provide new buckets and brackets?

(A16) Yes. The City encourages the Contractor to let them know if a bucket or bracket breaks so the City can order new ones. The City expects some items to break.

(Q17) Is the expectation the Contractor to clean under the trap?

(A17) The City expects the Contractor to inspect and vacuum under the trap as far back as reasonable. Under the buckets and within reach of the buckets must be cleaned.

(Q18) Does the Contractor need to clean the compressors?

(A18) The City expects the Contractor to wipe down the surface of the compressors.

(Q19) How often are dust containment unit filters need changed?

(A19) Each filter is changed about once every two years.

2.0 **Clarification:** Item 2.20 in Section 0500 Scope of Work has been updated to read:

The Contractor shall collect all lead and brass from firing ranges

3.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

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

APPROVED BY:


Erika, Larsen, Procurement Specialist II
Purchasing Office

02/13/2018
Date

ACKNOWLEDGED BY:

Metals Treatment Technologies, LLC
Vendor Name


Authorized Signature

3/5/18
Date

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



**ADDENDUM
REQUEST FOR PROPOSAL
LEAD REMOVAL AND CLEANING FOR APD TRAINING ACADEMY
CITY OF AUSTIN, TEXAS**

RFP 8700 EAD0135

Addendum No: 2

Date of Addendum: February 23, 2018

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

1.0 Extension:

Changes to the solicitation due dates as follows;

1.1 Solicitation Due Prior To time and date is changed to **2:00 pm (CDT), Tuesday March 6, 2018**

1.2 Solicitation Opening Time and Date is changed to **3:00 pm (CDT), Tuesday March 6, 2018**

2.0 Questions and Answers.

(Q1) What are the sizes of the large and small range?

(A1) Large Range: 178 feet long and 20'x114' behind bullet trap; Small Range: 178 feet long and 20'x66' behind the bullet trap

(Q2) Where is filter HVAC located?

(A2) The filter being referred to is the filter on the Dust Containment Unit outside of the range.

(Q3) In Section 0500 Scope of Work item 2.6, the City mentions receptacles. What are the receptacles?

(A3) The City has removed the receptacles.

(Q4) How much is lead is typically recovered at each cleaning?

(A4) Approximately ½ to ¾ of a 2.5 gallon bucket.

(Q5) Who provides the replacement filters for the dust containment unit?

(A5) The City provides the replacement filters for the dust containment unit.

(Q6) Is it state specific training that is required for the proof of Lead Awareness and Abatement Training mentioned in section 0500 Scope of work item 2.10?

(A6) See section 0500 Scope of work item 2.11 for requirements.

(Q7) Can PPE and equipment be stored at the site?

(A7) No.

(Q8) In Section 0500 Scope of Work Item 2.12, the City mentions "stanchions". What is the definition of a stanchions?

(A8) Stanchions are the support frame for the bullet trap.

(Q9) Can additional containers be stored onsite?

(A9) Yes, vendors may store drums at the range.



3.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

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

APPROVED BY:

Erika Larsen
Erika, Larsen, Procurement Specialist II
Purchasing Office

02/23/2018
Date

ACKNOWLEDGED BY:

Metals Treatment Technologies, LLC
Vendor Name

[Signature]
Authorized Signature

3/5/18
Date

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

GOAL DETERMINATION REQUEST FORM

Buyer Name/Phone	Erin D'Vincent 4-3070	PM Name/Phone	Dan Dellemonache
Sponsor/User Dept.	APD	Sponsor Name/Phone	974-5057
Solicitation No	RFP 8700 EAD0135	Project Name	Lead Removal and Reclamation
Contract Amount	\$600,000 over five years	Ad Date (if applicable)	1/15/18
Procurement Type			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input type="checkbox"/> IFB – IDIQ <input checked="" 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 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**			
Lead removal and cleaning of the APD firing range			
Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.			
CEA0018 - no goals and no subcontracting			
List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)			
91047 - 100%			
Erin D'Vincent		12/22/2017	
Buyer Confirmation		Date	

* Sole Source must include Certificate of Exemption

**Project Description not required for Sole Source

FOR SMBR USE ONLY			
Date Received	12/22/2017	Date Assigned to BDC	12/22/2017
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	
<input type="checkbox"/> Exempt from MBE/WBE Procurement Program		<input checked="" type="checkbox"/> No Goals	

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:

MBE/WBE/DBE Availability

1 certified firm available in area

Subcontracting Opportunities Identified

None

Cynthia Van Maanen

SMBR Staff

Signature/ Date

SMBR Director or Designee

Date

Returned to/ Date:

RFP/RFQS AWARD RECOMMENDATION

Solicitation No. RFP 8700 EAD0135, Lead Removal and Cleaning for

APD Training Academy

RECOMMENDATION OF AWARD TO:

MT2 LLC (METALS TREATMENT TECHNOLOGIES)

METHODOLOGY FOR RECOMMENDATION:

Issue Date	January 29, 2018
Close Date	March 6, 2018
Number of Offers Received	3
List (names & titles) of evaluation panel members	Sergeant Steven Willis Lieutenant Lee Rogers Dan Dellemonache – Contract Management Specialist III
Information on any Non-Responsive Offers not evaluated	En-Range was disqualified for not submitting the signed Offer Sheet, Section 0610 Rate Sheet, Section 0900, and addendums.
Recommending award to the highest evaluated Offeror (or other as appropriate)	Yes

STAFF SIGNATURE:



STAFF NAME & TITLE:

Erin D'Vincent

DATE:

4/3/18

Offer #1: MT2

Evaluation Criteria: Proposed Solution

Score 35 out of 40

Strengths and Weaknesses:

Strengths: MT2's employees have met all the training requirements for OSHA. They will dispose of used filters free of charge to the City. Their cleanings involve a high amount of attention to detail, indulging getting into the cracks and crevasses of the range. They will not use wet clean until after vacuuming has been completed, they also power wash the larger concrete areas. MT2 offered an alternative cleaning schedule that could save the City 60% in cleaning fees.

Weaknesses: MT2 is a regional based operation as opposed to an Austin based company.

Evaluation Criteria: Experience

Score 30 out of 30

Strengths and Weaknesses:

Strengths: MT2 has serviced over 400 agencies including the department of defense. They have also cleaned 1,500+ law enforcement and civilian ranges. MT2 has been in business since the early 2000s and focus their work on active ranges over long-term agreements. All the do is gun ranges so they have great experience.

Weaknesses: None

Evaluation Criteria: Local Presence

Score 0 out 10

Strengths and Weaknesses:

Didn't claim local presence

Evaluation Criteria: Service-Disabled Veteran Business Enterprise

Score 0 out of 3

Strengths and Weaknesses:

Did not claim Service-Disabled Veteran Business Enterprise

Offer #2: TASMAN GEOSCIENCES INC

Evaluation Criteria: Proposed Solution

Score 28 out of 40

Strengths and Weaknesses:

Strengths: Tasman provide a very detailed description of their cleaning practices which meet the industry standard. They offer lead testing from a lab in San Antonio. Once cleaning is complete they have a walk through with the officer in duty to make sure the range is cleaned to the City's standard.

Weaknesses: Tasman did not offer any additional options for cleanings. They only supplied an industry standard for lead abatement. An initial review is included which may cut into the 8 hours allowed for cleaning.

Evaluation Criteria: Experience

Score 20 out of 30

Strengths and Weaknesses:

Strengths: Tasman has experience remediating ranges. Collectively, Tasman's employees have over 50 years of experience.

Weaknesses: Tasman's strengths seem to be remediating ranges and we have an active range. The military ranges they listed as examples are much smaller than Austin's range.

Evaluation Criteria:

Score 0 out 10

Strengths and Weaknesses:

Didn't claim local presence

Evaluation Criteria: Service-Disabled Veteran Business Enterprise

Score 0 out of 3

Strengths and Weaknesses:

Did not claim Service-Disabled Veteran Business Enterprise

PRICE POINT ASSIGNMENT:

MT2	\$168,000.00	17
Tasman	\$190,884.00	15

AWARD AMOUNT IS BASED ON:

- ☒ Price Proposed in response
- ☐ Amount listed in solicitation
- ☐ Budget amount
- ☐ Other (please describe):