

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")  
AND  
Agilent Technologies Inc ("Contractor")  
for  
Maintenance and Repair of Agilent Lab Equipment  
MA 2200 NA180000133**

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 Agilent Technologies Inc having offices at 2850 Centerville Rd, Wilmington, DE 19808 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number IFB 2200 JRH1001.

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

1.1.1 This Contract

1.1.2 The City's Solicitation, Invitation for Bid (IFB), 2200 JRH1001 including all documents incorporated by reference

1.1.3 Agilent Technologies Inc Offer, dated 05/07/2018, 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 twenty-four (24) months and may be extended thereafter for up to three (3) twelve (12) month extension option(s), subject to the approval of the Contractor and the City Purchasing Officer or his designee. See the Term of Contract provision in Section 0400 for additional Contract requirements.

**1.4 Compensation.** The Contractor shall be paid a total Not-to-Exceed amount of \$53,539.50 for the initial Contract term and \$26,769.75 for each extension option for a total contract amount not to exceed \$133,848.75. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.

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

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.

**Agilent Technologies Inc**

**CITY OF AUSTIN**

Tom Fenton

Printed Name of Authorized Person



Tom  
Fenton

Digitally signed  
by Tom Fenton  
Date: 2018.06.04  
15:51:31 -04'00'

Signature

Bid Response Technical Specialist

Title:

04JUN2018

Date:

Michelle Pearson

Printed Name of Authorized Person



Signature

Procurement Specialist II

Title:

6/8/18

Date:



## CITY OF AUSTIN, TEXAS

### Purchasing Office INVITATION FOR BID (IFB) OFFER SHEET

Version 1.2 05/02/2018

**SOLICITATION NO:** IFB 2200 JRH1001

**DATE ISSUED:** April 23, 2018

**REQUISITION NO.:** RQM 2200 18031500350

**COMMODITY CODE:** 93881

**COMMODITY/SERVICE DESCRIPTION:** Maintenance and Repair of Agilent Lab Equipment

**PRE-BID CONFERENCE TIME AND DATE:** 1:00 PM CST May 8, 2018

**LOCATION:** Austin Water Utility, EAS Laboratory, 7113 FM 969, Austin, TX 78724

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

John Hilbun  
Contract Mgmt Specialist IV

**Phone:** (512) 974-1054

**E-Mail:** [john.hilbun@austintexas.gov](mailto:john.hilbun@austintexas.gov)

**BID DUE PRIOR TO:** 2:00 PM CST May 15, 2018

**BID OPENING TIME AND DATE:** 3:00 PM CST May 15, 2018

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

**LIVE BID OPENING ONLINE:**

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

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

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

Address for US Mail (Only)	Address for FedEx, UPS, Hand Delivery or Courier Service
City of Austin	City of Austin, Municipal Building
Purchasing Office-Response Enclosed for Solicitation # IFB 2200 JRH1001	Purchasing Office-Response Enclosed for Solicitation # IFB 2200 JRH1001
P.O. Box 1088	124 W 8 <sup>th</sup> Street, Rm 308
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

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

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

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

**SUBMIT 1 ORIGINAL AND 1 ELECTRONIC COPY (USB FLASH DRIVE) OF YOUR RESPONSE**

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



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

SECTION NO.	TITLE	PAGES
0100	STANDARD PURCHASE DEFINITIONS	*
0200	STANDARD SOLICITATION INSTRUCTIONS	*
0300	STANDARD PURCHASE TERMS AND CONDITIONS	*
0400	SUPPLEMENTAL PURCHASE PROVISIONS	6
0500	SCOPE OF WORK	4
0600	BID SHEET – Must be completed and returned with Offer	2
0605	LOCAL BUSINESS PRESENCE IDENTIFICATION FORM – Complete and return	2
0700	REFERENCE SHEET – Complete and return	2
0800	NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION – Complete and return	2
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	*
0810	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION	*
0835	NONRESIDENT BIDDER PROVISIONS – Complete and return	1

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

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

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

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: Agilent Technologies, Inc.

Company Address: 2850 Centerville Road

City, State, Zip: Wilmington, DE 19808-1610

Federal Tax ID No.

Printed Name of Officer or Authorized Representative: Tom Fenton

Title: Bids Response Technical Specialist

Signature of Officer or Authorized Representative: 

Date: 05/07/2018

Email Address: tom.fenton@agilent.com

Phone Number: 302-636-8071

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

**CITY OF AUSTIN  
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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

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

**10. WORKFORCE**

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

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

**12. INVOICES:**

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

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13. **PAYMENT:**

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

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

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



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

**15. FINAL PAYMENT AND CLOSE-OUT:**

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

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

**17. AUDITS and RECORDS:**

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. Records Retention:
  - i. Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.
  - ii. All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City
  - iii. The Contractor shall retain all Records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.
- C. The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.

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**18. SUBCONTRACTORS:**

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

**19. WARRANTY-PRICE:**

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

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

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

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

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**30. DELAYS:**

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

**31. INDEMNITY:**

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

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

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



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

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

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

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

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

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

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

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**48. DISPUTE RESOLUTION:**

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

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

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

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

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

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

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

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

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

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

54. **EQUAL OPPORTUNITY**

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

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

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

A. Definitions. As used in this paragraph –

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

ii. "Cost of components" means -

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



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

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**SECTION 0400: SUPPLEMENTAL PURCHASE PROVISIONS**  
**IFB 2200 JRH1001: MAINTENANCE AND REPAIR OF AGILENT LAB EQUIPMENT**

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 at least five (5) days prior to the Solicitation Due Date. Questions may be submitted to the designated point of contact John Hilbun at [john.hilbun@austintexas.gov](mailto:john.hilbun@austintexas.gov).

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](mailto: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.

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- (c) Products/Completed Operations Liability for the duration of the warranty period.
      - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.
    - (2) The policy shall also include these endorsements in favor of the City of Austin:
      - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
      - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
      - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
  - iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
    - (1) The policy shall include these endorsements in favor of the City of Austin:
      - (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
      - (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
      - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
  - C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.
3. **TERM OF CONTRACT:**
- A. The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of twenty-four (24) months. The Contract may be extended beyond the initial term for up to three (3) additional twelve (12) month periods at the City's sole option. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
  - B. Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract. Any hold over period will not exceed 120 calendar days unless mutually agreed on by both parties in writing.
  - C. 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 sent to the below email address:



**CITY OF AUSTIN - PURCHASING OFFICE**  
**SECTION 0400: SUPPLEMENTAL PURCHASE PROVISIONS**  
**IFB 2200 JRH1001: MAINTENANCE AND REPAIR OF AGILENT LAB EQUIPMENT**

	City of Austin
Department	Austin Water
Attn:	Glenly Iffla
Email Address	<a href="mailto:glenly.iffila@austintexas.gov">glenly.iffila@austintexas.gov</a>

- 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. PUBLISHED PRICE LISTS:**

- A. Offerors may quote using published price lists in the following ways:
- i. Offerors may quote one discount from a Published Price List for all offered items to be covered in the Contract. The discount must remain firm during the life of the Contract.
  - ii. Offerors may quote their dealer cost, plus a percentage markup to be added to the cost. The percentage markup must remain firm during the life of the contract.
- B. Two (2) copies of the list upon which the discounts or markups are based shall be submitted with the Offer. All price lists identified in the Offer shall clearly include the Offeror's name and address, the solicitation number, prices, title of the discount and number, and the latest effective date of the price list. If the Offer is based on a discount or markup on a manufacturer's price list, the price list must also include the manufacturer's name, the manufacturer's latest effective date, and the manufacturer's price schedule. All price lists submitted become part of the Offer.
- C. The price list may be superseded or replaced during the Contract term only if price revisions are the result of the manufacturer's official price list revision. Written notification from the Contractor of price changes, along with two (2) copies of the revised list must be submitted to the Buyer in the Purchasing Office with the effective date of change to be at least thirty (30) calendar days after written notification. The City reserves the right to refuse any list revision.
- D. The discounts or markups on equipment rental, material, supplies, parts, and contract services shall be fixed throughout the term of the Contract, and are not subject to increase.
- E. Failure to submit written notification of price list revisions will result in the rejection of new prices being invoiced. The City will only pay invoices according to the last approved price list.

**7. WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):**

- A. Access to the Austin Water Department building by the Contractor, all subcontractors and their employees will be strictly controlled at all times by the City. Security badges will be issued by the Department for this purpose. The Contractor shall submit a complete list of all persons requiring access to the Austin Water building at least thirty (30) days in advance of their need for access. The City reserves the right to deny a security badge to any Contractor personnel for reasonable cause. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor's submittal.
- B. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the contract, the Contractor shall so notify the City's Contract Manager, in writing, within ten (10) days of the receipt of notification of denial.

**CITY OF AUSTIN - PURCHASING OFFICE**  
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- C. Contractor personnel will be required to check in at the security desk when entering or leaving the Austin Water building and security badges must be on display at all times when in the building. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule. Security badges may not be removed from the premises.
  - D. The Contractor shall provide the City's Contract Manager with a list of personnel scheduled to enter the building, seven days in advance. The list shall identify the persons by name, date of birth, driver's license number, the times that they will be inside the building and the areas where they will be working. Only persons previously approved by the City for the issuance of security badges will be admitted to the building.
  - E. The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees and subcontractors are kept fully informed as to these requirements.
8. **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 twenty-five percent (25%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.
  - B. **Effective Date:** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.
  - C. **Adjustments:** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.
  - D. **Indexes:** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.
    - i. The following definitions apply:
      - (1) **Base Period:** Month and year of the original contracted price (the solicitation close date).
      - (2) **Base Price:** Initial price quoted, proposed and/or contracted per unit of measure.
      - (3) **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
      - (4) **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.
      - (5) **Weight %:** The percent of the Base Price subject to adjustment based on an index change.
    - ii. **Adjustment-Request Review:** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
      - (1) Utilize final Compilation data instead of Preliminary data
      - (2) If the referenced index is no longer available shift up to the next higher category index.
    - iii. **Index Identification:** Complete table as they may apply.



**CITY OF AUSTIN - PURCHASING OFFICE**  
**SECTION 0400: SUPPLEMENTAL PURCHASE PROVISIONS**  
**IFB 2200 JRH1001: MAINTENANCE AND REPAIR OF AGILENT LAB EQUIPMENT**

Weight % or \$ of Base Price: 100%	
Database Name: Producer Price Index	
Series ID: PCU811310811310	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: US Average	
Description of Series ID: Commercial machinery repair and maintenance	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: All quoted items	

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.

9. **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:

Glennly Iffla

Austin Water

[glennly.iffly@austintexas.gov](mailto:glennly.iffly@austintexas.gov)

(512) 972-1414

**CITY OF AUSTIN – PURCHASING OFFICE**  
**SECTION 0500: SCOPE OF WORK**  
**IFB 2200 JRH1001: MAINTENANCE AND REPAIR OF AGILENT LAB EQUIPMENT**

**1.0 Purpose**

The City of Austin (City), seeks bids in response to this solicitation to establish a contract with a qualified Vendor (Contractor) to provide annual preventative maintenance and repair services for an Agilent Model 7700x, ICP-MS, ASX-500 Auto Sampler and an Agilent Technologies Model G1879B Heat exchanger. The Contractor shall provide all labor, material, and necessary equipment for the proper execution of each level of inspection and maintenance service detailed in this specification.

This contract will support the Austin Water Environmental Analytical Services Laboratory (EAS Lab). The City reserves the right to add or delete departments and equipment as deemed necessary. Equipment added to the contract shall coincide with the expiration of their warranty period, and shall be mutually agreed upon between the Contractor and the City. The equipment for this contract is located at the EAS-Lab in Austin, TX.

This solicitation will have a Pre-Bid Meeting at which Contractors are encouraged to attend which will include a site visit to fully assess the equipment prior to submitting a bid.

Any services that have been omitted from this scope of work which are clearly necessary or in conformance with normal mass spectrometer equipment inspection, maintenance, and repair services shall be considered a requirement although not directly specified or called for in the scope of work.

**2.0 Background**

The ICP-MS System is used by the City of Austin Water Utility's Environmental Analytical Services Laboratory (EAS Lab) for the performance of water analyses. The EAS Lab is located at 7113 FM 969, Austin, Texas 78724.

**3.0 General Requirements**

Maintenance and repair services shall be provided for the following equipment:

- 3.1 Agilent Model 7700x, Inductively Coupled Plasma-Mass Spectrometer (ICP-MS) Serial # JP13382701
- 3.2 Agilent ASX-500 Auto-Sampler Serial # 813130A520
- 3.3 Agilent Technologies Model G1879B, Heat exchanger, Serial # 2E1380998

**4.0 Contractor Responsibilities**

**4.1 Contractor Qualifications**

- 4.1.1 The Contractor's personnel shall meet all applicable certification and/or licensing requirements having jurisdiction.
- 4.1.2 The Contractor shall provide an Agilent factory-authorized service representative.
- 4.1.3 The Contractor shall be certified for the equipment listed under Section 3.0. Contractor shall provide proof of certification for the equipment with the bid submittal.
- 4.1.4 The Contractor shall provide a preventative maintenance plan prior to contract award or as requested, that is mutually agreed upon between the Contractor and the City for all equipment to be maintained under this contract. Maintenance shall be coordinated and agreed upon with the Contract Point of Contact or designee. The Contractor shall inform the Contract Point of Contact or designee of any changes in scheduling.

**4.2 Contractor Requirements**

- 4.2.1 The Contractor shall provide all equipment, materials, labor, tools, incidentals, expendable items, personnel protective equipment, and transportation necessary for proper execution and completion of inspection maintenance, repair, and replacement services. The materials and services provided

**CITY OF AUSTIN – PURCHASING OFFICE**  
**SECTION 0500: SCOPE OF WORK**  
**IFB 2200 JRH1001: MAINTENANCE AND REPAIR OF AGILENT LAB EQUIPMENT**

by the Contractor shall comply with all current Federal, State and local laws, City of Austin ordinances, rules and regulations.

- 4.2.2 The Contractor shall be responsible for ensuring the safety of their employees, City employees, and the public during performance of all services under this contract. The Contractor shall ensure that all crews are fully and properly equipped to perform services promptly and safely.
- 4.2.3 The Contractor shall maintain and repair all equipment so that they operate to the original manufacturer's performance specifications.
- 4.2.4 The Contractor shall be responsible for the immediate clean-up of the work area and the removal of debris. Cleaning of the work area shall be subject to the City representative's inspection and approval.
- 4.2.5 For service repair, the Contractor shall provide a detailed service report, including additional repairs needed, to the Contract Point of Contact or designee for signature indicating service levels performed during the visit. A copy of the signed report shall be submitted with the invoice.
- 4.2.6 The Contractor shall email a record of finding/service report for each inspection performed within three (3) days, or mutually agreed to between the Contractor and the Contract Point of Contact or designee. The report shall include any corrective action taken and/or needed and recommendations for replacement of major components with a written estimate including labor, travel costs, fuel surcharges, delivery and freight charges, service parts, including consumable parts required for repair. A copy of this report shall be submitted with the inspections invoice.
- 4.2.7 The replacement of major components shall not be executed without written authorization from the Contract Point of Contact or designee. The Contractor shall contact the Contract Point of Contact or designee for any critical issues at the time of discovery by phone, pager, email, or any means necessary to discuss corrective action.
- 4.2.8 The Contractor shall dispose of all worn/defective parts, oils, solvents, in accordance with all applicable laws, rules and regulations to ensure the highest level of safety to the environment and public health at no additional cost to the City. The Contractor shall provide the manifest ticket for hazardous materials or other proof of proper disposal on request or at the time of invoicing.
- 4.2.9 The Contractor shall not store worn or defective parts on City premises at the end of the work day unless otherwise specified by the Contract Point of Contact or designee.
- 4.2.10 The Contractor shall provide within 5 business days of award, or mutually agreed to between the Contractor and the Contract Point of Contact or designee, a copy of the most current manufacturer's price list for parts. All future updated manufacturer's price lists during the term of this contract shall be provided at the annual anniversary of the contract. If no part list is provided then the previous year's part list will be utilized.
- 4.2.11 The Contractor shall be responsible for damage done to property or equipment as a direct result of the Contractor's actions. If the Contractor and/or his employees cause any damage to City property, the Contractor shall immediately inform the Contract Point of Contact or designee. The Contractor shall make repairs or replacement to the satisfaction of the City representative at no cost to the City. The City may, however, at its sole discretion, elect to make repairs or replacements of damaged property and deduct the cost from any payments owed to Contractor or to recover costs if no payments are owed.

**4.3 Service Requirements**

- 4.3.1 The Contractor shall perform annual preventative maintenance, replacing all normal wear parts, to include, valves, seals, washers, syringes, and tubing. The Contractor shall be responsible for ensuring the Mass Spectrometer, Auto-Sampler and Heat Exchanger are operating in accordance with the original manufacture's recommended performance standards.

**CITY OF AUSTIN – PURCHASING OFFICE**  
**SECTION 0500: SCOPE OF WORK**  
**IFB 2200 JRH1001: MAINTENANCE AND REPAIR OF AGILENT LAB EQUIPMENT**

- 4.3.2 All parts and equipment for the mass spectrometer, auto-sampler and heat exchanger shall be new and original equipment manufacturer (OEM) only.
- 4.3.3 The Contractor shall include telephone support to isolate and resolve hardware and software problems.
- 4.3.4 The Contractor shall ensure all software is updated, system diagnostics are conducted, and file maintenance is performed to insure optimal performance.
- 4.3.5 Contractor shall perform on-site hardware troubleshooting within two business days of request by Austin Water.
- 4.3.6 The Contractor shall include preventative maintenance once per year for each piece of equipment listed above.
- 4.3.7 The Contractor shall schedule the preventative maintenance service visit within 2 weeks after notification by the Contract Point of Contact or designee.
- 4.3.8 Non-Scheduled service shall be performed within 72 hours of notification and shall be performed Monday through Friday between 8:00 a.m. and 5:00 p.m. CST, excluding City holidays. The Contractor shall be responsible for informing the Contract Point of Contact or designee within 30 minutes, or a time mutually agreed upon between Contractor and Contract Point of Contact or designee, after finding any repairs that need to be completed outside of the preventative maintenance service visit. The Contractor shall make the repairs at the time of the visit, as approved by the Contract Point of Contact or designee.
- 4.3.9 Emergency service shall be Monday through Friday between 5:01 p.m. and 8:00 a.m. CST, excluding City holidays.
- 4.4 Warranty
  - 4.4.1 Parts shall be warranted by the Contractor and shall be free from defects for a period of no less than 90 days from installation or for the period warranted by the manufacturer, whichever is longer.
  - 4.4.2 Labor performed shall be warranted for a period of no less than 180 days from the date of service.

**5.0 City's Responsibilities**

- 5.1 The City will provide light, water, and electricity as necessary to enable the contractor to provide the services described in this document. The Contractor shall use these facilities only to perform the contractual duties.
- 5.2 The City will provide an on-site contact with escorted access.
- 5.3 The City will provide the Contractor with name(s) of personnel authorized to order services.

**CITY OF AUSTIN – PURCHASING OFFICE**  
**SECTION 0500: SCOPE OF WORK**  
**IFB 2200 JRH1001: MAINTENANCE AND REPAIR OF AGILENT LAB EQUIPMENT**

**6.0 Deliverables/Milestones**

<b>Deliverables/Milestones</b>	<b>Description</b>	<b>Timeline (due/completion date, reference date, or frequency)</b>	<b>Performance Measure/ Acceptance Criteria</b>	<b>Contract Reference / Section</b>
Proof of Certification	Contractor shall provide proof of certification to service Agilent Mass Spectrometer, Auto Sampler, and Heat Exchanger	With bid	100% compliance	4.1.3
Preventative Maintenance	Contractor shall schedule the preventative maintenance within 2 weeks of notification.	Within 2 weeks of notification	100% compliance	4.3.7
Non-scheduled services	Perform services upon notification.	Within 72 hours of notification	100 % compliance	4.3.8
Current Manufacture's Price List	Provide Price list for parts	Within 5 business days after award of contract	100 % compliance	4.2.10



**BID SHEET  
CITY OF AUSTIN  
MAINTENANCE AND REPAIR OF AGILENT LAB EQUIPMENT**

**SOLICITATION NO.:** IFB 2200 JRH1001

**BUYER:** John Hilbun

**Special Instructions:** Offerors must use this Bid Sheet to submit pricing. Be advised that altering the bid sheet or taking exceptions to any portion of the solicitation may jeopardize acceptance of your Offer.

The quantities noted below are estimates and not a guarantee of actual volume. The City does not guarantee the purchase of the quantities listed, actual purchases may be more or less. Quantities are provided as a guide based on historical or anticipated usage. Order quantities will be as-needed and specified by the City for each order.

A bid of "0" (zero) will be interpreted by the City as a no-charge (free) item and the City will not expect to pay for that item. A bid of "no bid" or no response (space left blank) will be interpreted by the City that the Offeror does not wish to bid on that item. Be advised, a "no bid" or no response may be considered as non-responsive and may result in disqualification of the bid.

Prices offered on the bid sheet shall be all inclusive of fees not expressly allowed in the scope of work. The Offeror shall not charge separately for administrative, overhead, per diem, and shipping or transportation costs (travel time, fuel surcharges, mileage, stop-fee, etc.) to deliver services or items to the Austin, Texas area. The Offeror shall provide all tools, labor, travel, and equipment necessary to perform the services required under this contract.

The City reserves the right to award a single contract based on overall low cost or multiple awards based on individual or categories/groups of specific line items, cost, or any criteria or combination deemed most advantageous to the City.

**CATEGORY 1 - PREVENTATIVE MAINTENANCE**

ITEM NO.	ITEM DESCRIPTION	UNIT OF MEASURE	ESTIMATED ANNUAL QUANTITY	UNIT PRICE	EXTENDED PRICE
1.1	Flat Fee for Annual Preventative Maintenance per scope of work for the Agilent Mass Spectrometer model 7700x	EACH	1	<b>\$15,441.30</b>	\$15,441.30
1.2	Flat Fee for Annual Preventative Maintenance per scope of work for the Auto-Sampler serial #813130A520	EACH	1	<b>Included with purchase</b>	<b>Included with purchase</b>
1.3	Flat Fee for Annual Preventative Maintenance per scope of work for the Agilent Heat Exchanger serial #2E1380998	EACH	1	<b>Included with purchase</b>	<b>Included with purchase</b>
<b>SUBTOTAL FOR CATEGORY 1 =</b>					<b>\$15,441.30</b>

**CATEGORY 2 - LABOR RATES**

The estimate shall not include a separate charge for administrative, overhead, per diem, and transportation (i.e. travel time, mileage, and fuel) costs. These expenses shall be included in the hourly rates and shall not be paid separately

ITEM NO.	ITEM DESCRIPTION	UNIT OF MEASURE	ESTIMATED ANNUAL QUANTITY	UNIT PRICE	EXTENDED PRICE
2.1	Labor rate for Non-Scheduled repair	HOUR	10	<b>\$459.00</b>	\$4,599.00
2.2	Labor rate for Emergency Service Repair	HOUR	5	<b>\$1,027.69</b>	\$4,110.75
<b>SUBTOTAL FOR CATEGORY 2 =</b>					<b>\$8,709.75</b>

**CATEGORY 3 - PARTS AND MATERIALS**

Proposer shall be able to provide new and replacement parts and associated components to complete installation and repairs. The prices for these items shall be based on manufacturer price lists minus a discount of list price as indicated below.

The percentage discounts shall be fixed throughout the term of the Contract including any subsequent renewal periods and are not subject to increase.

ITEM NO.	ITEM DESCRIPTION	ESTIMATED ANNUAL AMOUNT	DISCOUNT OFF PRICE LIST	EXTENDED PRICE
3.1	Discount off Price List for all Mas Spectrometer, Equipment and associated components	<b>\$2,000.00 (Only applicable Category 1)</b>	<b>11.50%</b>	\$2,076.90

**TOTAL EXTENDED PRICE FOR CATEGORIES 1 THRU 3 =** **\$2,618.70**



**CATEGORY 4 - DISCOUNT OFF OR MARKUP TO MANUFACTURER PRICE LISTS FOR NON-SPECIFIED PRODUCTS (For Informational Purposes Only)**

The City may wish an Offeror provide additional products as they relate to this contract. In order to be paid for those additional products, provide manufacturers name and catalog numbers for the additional products you can provide the City. Indicate the minimum percentage discount or maximum markup to costs you can provide the City for these products. The percentage discount(s) or markup(s) listed shall be fixed throughout the term of the Contract including any subsequent renewal periods.

This information will not be used in the evaluation of the bid but is for informational purposes only and there is no guarantee of purchase. Please include additional pages as necessary.

ITEM NO	NAME AND NUMBER OF PRICE LIST	LATEST EFFECTIVE DATE OF PRICE LIST	MINIMUM DISCOUNT FROM OR MAXIMUM MARKUP TO PRICE LIST
4.1	Name _____Agilent does not maintain published price lists, and pricing is only available through our corporate on-line database from which all quotations are generated. Agilent represents and warrants that the list prices quoted for the products included on referenced quotation are based on our <del>commercial prices generated from our electronic database pricing in effect at the time of quotation.</del>		_____N/a_____ % Discount or _____N/a_____ % Markup
4.2	Name _____Agilent does not maintain published price lists, and pricing is only available through our corporate on-line database from which all quotations are generated. Agilent represents and warrants that the list prices quoted for the products included on referenced quotation are based on our <del>commercial prices generated from our electronic database pricing in effect at the time of quotation.</del>		_____N/a_____ % Discount or _____N/a_____ % Markup

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

NUMBER OF DAYS AFTER RECEIPT OF ORDER THE OFFEROR SHALL DELIVERY THE ITEMS TO THE CITY:

3

DELIVERY METHOD: ☐COMMON CARRIER (FedEx,UPS) ☒NDOR DELIVERY

COMPANY NAME: Agilent Technologies, Inc.

EMAIL ADDRESS: Iscabids@agilent.com

**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		
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

**SUBCONTRACTOR(S):**

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

**Section 0700: Reference Sheet**Responding Company Name Agilent Technologies, Inc.

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

1. Company's Name City of Forth Worth Water Department  
Name and Title of Contact Johnny Skelton Senior Chemist  
Project Name \_\_\_\_\_  
Present Address 2600 SE Loop 820  
City, State, Zip Code Fort Worth, TX 76140  
Telephone Number ( 817 ) 392-5916 Fax Number ( \_\_\_\_\_ )  
Email Address Johnny.Skelton@FortWorthTexas.gov
  
2. Company's Name Harris County Institute of Forensic Sciences  
Name and Title of Contact Shahriar Shahreza Terchnical Specialist  
Project Name \_\_\_\_\_  
Present Address 1861 Old Spanish Trail  
City, State, Zip Code Houston, TX 77054  
Telephone Number ( 832 ) 927-5287 Fax Number ( \_\_\_\_\_ )  
Email Address Shahriar.Shahreza@ifs.hctx.net
  
3. Company's Name City of Garland  
Name and Title of Contact Fred Norris Laboratory Manager  
Project Name \_\_\_\_\_  
Present Address 200 N 5th St  
City, State, Zip Code Garland, TX 75040  
Telephone Number ( 972 ) 205-4012 Fax Number ( \_\_\_\_\_ )  
Email Address FNorris@garlandtx.gov

**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 10th day of May, 2018

CONTRACTOR  
Authorized  
Signature

Tom Fenton  


Title

Bid Response Technical Specialist



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

Company Name Agilent Technologies, Inc.

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

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

Answer: non-resident

- (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: Yes Which State: Delaware

- 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: Only for construction



**ADDENDUM  
CITY OF AUSTIN, TEXAS**

---

**Solicitation: IFB 2200 JRH1001**

**Addendum No: 1**

**Date of Addendum: April 25, 2018**

---

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

**I. Changes:**

- Offer Sheet has been modified and replaced.
- Section 0400 – Supplemental Purchase Provisions have been modified and replaced.
- Section 0815 – Living Wages Contractor Certification has been deleted.

ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

APPROVED BY: \_\_\_\_\_

John Hilbun, Contract Mgmt Specialist IV  
Purchasing Office  
(512) 974-1054

04/25/18  
Date

ACKNOWLEDGED BY:

Tom Fenton

\_\_\_\_\_  
Name

Tom Fenton  
Authorized Signature

05/14/2018

\_\_\_\_\_  
Date

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



**ADDENDUM  
CITY OF AUSTIN, TEXAS**

---

**Solicitation: IFB 2200 JRH1001**

**Addendum No: 2**

**Date of Addendum: May 2, 2018**

---

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

- I. **Extension:** The bid due date is hereby extended until Tuesday, May 15 at 2:00 PM CST. The bid opening is hereby extended until Tuesday, May 15 at 3:00 PM CST. The Offer Sheet has been replaced to reflect the new due date.
- II. **Pre-Bid Conference:** The pre-bid conference date and time has been changed to Tuesday, May 8 at 1:00 PM CST. The Offer Sheet has been replaced to reflect the new pre-bid conference date.

ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

APPROVED BY:   
John Hilbun, Contract Mgmt Specialist IV  
Purchasing Office  
(512) 974-1054

05/02/18  
Date

ACKNOWLEDGED BY:

Tom Fenton  
Name

  
Authorized Signature

05/14/2018  
Date

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



## Agilent Technologies

Agilent Technologies Inc.  
2850 Centerville Road  
Wilmington DE 19808-1610  
United States

Tel: 1-800-227-9770 opt 1, then 5  
Fax: 1-302-633-8954  
Email: [agreements\\_lfssupport@agilent.com](mailto:agreements_lfssupport@agilent.com)  
Website: [www.agilent.com/chem](http://www.agilent.com/chem)

### Delivery Site:

City of Austin  
Walnut Creek Wstp Lab  
7113 E M L King Blvd  
AUSTIN TX 78724  
USA  
Tax ID:

John Hilbun  
[john.hilbun@austintexas.gov](mailto:john.hilbun@austintexas.gov)  
+15129741054

### Invoice To:

City of Austin  
Walnut Creek Wstp Lab  
7113 E M L King Blvd  
AUSTIN TX 78724  
USA  
Tax ID:

## QUOTATION

<b>Quotation Number:</b> 5000551900	<b>Quotation Date:</b> May 10, 2018
<b>Coverage Period:</b> 05/01/2018 - 04/30/2021	<b>Payment Terms:</b> Net 30 days
<b>Quotation Expiration Date:</b> All quoted prices are valid for 90 days from quotation date.	

### Direct Inquiries to:

Contact Name: Maureen Muturi  
Contact E-mail: [MAUREEN.MUTURI@NON.AGILENT.COM](mailto:MAUREEN.MUTURI@NON.AGILENT.COM)  
Contact Telephone: +13026338484  
Contact Fax:

### Service Contract Quotation:

<b>Ship To:</b>	City of Austin Walnut Creek Wstp Lab 7113 E M L King Blvd AUSTIN TX 78724 USA
-----------------	---

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Agilent Technologies Inc  
5301 Stevens Creek Blvd  
Santa Clara CA 95051  
United States

Federal Tax ID: [REDACTED]

Beneficiary Bank: Bank of America  
SWIFT: BOFAUS3N  
Beneficiary Account: 12331-31561  
Beneficiary Name: Agilent Technologies Inc

ORIGINAL

**Quotation Number:** 5000551900

**Quotation Date:** May 10, 2018

Item #	System Handle	Serial Number	Model Description	Service Description	EGS	Qty	Start date / End date if different from SC Period	Total Price (USD)
1	SSUF-304832383		ICPMS 7700 System	CROSSLAB SILVER	12/31/2022	1		54,180.00
			Heat Exchanger					
			ASX-500 Series Autosampler		12/31/2022			
			Agilent 7700x ICP-MS		12/31/2022			

<b>Total Amount before Discount</b>	54,180.00
<b>Discount - Region/Country</b>	-6,230.70
<b>Discount - Multi-Year PO</b>	-1,625.40
<b>Total before Tax</b>	46,323.90
<b>Sales Tax 0.000%</b>	0.00
<b>Total (USD)</b>	46,323.90

**EGS = End of Guaranteed Support for earliest module**

**Summary of Charges:**

Note: These prices reflect additions, deletions and warranties.

Year:	Invoice Period:	Prices by Invoice Period:
YEAR 1	05/01/2018 - 04/30/2019	15,441.30
YEAR 2	05/01/2019 - 04/30/2020	15,441.30
YEAR 3	05/01/2020 - 04/30/2021	15,441.30

Notes:

Amount excludes any applicable taxes. Applicable taxes will be separately stated on the invoice at time of billing.

**Quotation Number:** 5000551900

**Quotation Date:** May 10, 2018

<b>Exhibit</b>	<b>URL</b>
----------------	------------

Exhibit22X.aspx	<a href="http://www.agilent.com/en-us/services/analytical-instrument-services/exhibit22x">http://www.agilent.com/en-us/services/analytical-instrument-services/exhibit22x</a> <a href="#">Password: br8zUWuC</a>
-----------------	---

This Quotation is valid only for the period indicated. All Services quoted are subject to the Agilent Service Terms ([http://www.chem.agilent.com/en-US/products-services/Services/Pages/e16S\\_us\\_canada\\_mexico.aspx](http://www.chem.agilent.com/en-US/products-services/Services/Pages/e16S_us_canada_mexico.aspx)) and the Agilent Service Exhibits referenced above. Products, parts and software are subject to the Agilent Terms of Sale ([http://www.chem.agilent.com/en-US/products-services/Services/Pages/e16S\\_us\\_canada\\_mexico.aspx](http://www.chem.agilent.com/en-US/products-services/Services/Pages/e16S_us_canada_mexico.aspx)). Products or Services that are manufactured, configured or adapted to meet Customer's requirements are subject to the Agilent Terms of Sales - Custom products

([http://www.chem.agilent.com/en-US/products-services/Services/Pages/e16S\\_us\\_canada\\_mexico.aspx](http://www.chem.agilent.com/en-US/products-services/Services/Pages/e16S_us_canada_mexico.aspx)). If you have a previously signed agreement with Agilent covering such Products, Services or spare parts, the terms of that agreement will take precedence for those Products, Services or spare parts. Agilent expressly objects to any different or additional terms in your purchase/sales order documentation, unless agreed to in writing by Agilent. Spare parts and Service availability dates are estimated at the time of the quotation. Actual delivery dates or delivery windows will be specified at the time Agilent acknowledges and accepts your purchase order. The above conditions shall apply to the fullest extent permitted by the law governing this transaction and shall not derogate from any statutory or legal rights you may have thereunder. Commodities, technology or software exported from the United States of America ("U.S.") or from other exporting countries will be subject to the U.S. Export Administration Regulations and all exporting countries' export laws and regulations. Diversion contrary to U.S. law and the applicable export laws and regulations is prohibited. Warranty: Unless otherwise indicated herein, spare parts referenced in this document will receive a 90 day replacement warranty.





**Customer Contact:**

City of Austin  
Walnut Creek Wstp Lab  
7113 E M L King Blvd  
AUSTIN TX 78724  
USA

Martia Ross  
[martia.ross@non.agilent.com](mailto:martia.ross@non.agilent.com)  
302-636-1869

**Invoice To:**

City of Austin  
Walnut Creek Wstp Lab  
7113 E M L King Blvd  
AUSTIN TX 78724  
USA

**Delivery Site:**

City of Austin  
Walnut Creek Wstp Lab  
7113 E M L King Blvd  
AUSTIN TX 78724  
USA

**Location:**

**Room**  
**Bldg**  
**Lab**  
**Dept**

**BUDGETARY QUOTATION**

<b>Budgetary Quotation Number:</b> 3000243936	<b>Budgetary Quotation Date:</b> April 30, 2018
<b>Model Number:</b> G3286A	<b>Model Description:</b> ASX-500 Series Autosampler
<b>Serial Number:</b> [REDACTED]	<b>Quotation Expiration Date:</b> May 30, 2018
<b>Payment Terms:</b> Net 30 days	<b>Acceptance Method for Quotation:</b> Purchase Order or Credit Card
<b>Service Request Number:</b> 8101877094	

**Direct Inquiries to:**

Contact Name: AFO Quotes team  
Contact Email: [tradeservices@agilent.com](mailto:tradeservices@agilent.com)  
Contact Telephone: 1 800 227 9770 X 7648  
Contact Fax: 1 302 993 5963

**Service Request Problem Description:** Repair Priority Response

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Agilent Technologies Inc  
5301 Stevens Creek Blvd  
Santa Clara CA 95051  
United States

Federal Tax ID: [REDACTED]

Beneficiary Bank: Bank of America  
SWIFT: BOFAUS3N  
Beneficiary Account: 12331-31561  
Beneficiary Name: Agilent Technologies Inc

ORIGINAL

Item #	Description	Charge Type	Qty / Hour	Unit Price	Total Price (USD)
1000	Repair	Trail Charge	1.00	2,976.75	2,976.75
1000		Labor Charge	3.00	378.00	1,134.00
1000		Service Subtotal			4,110.75
				Total Price before Tax	4,110.75
				Sales Tax 0.000%	0.00
				Total Price	4,110.75

**Customer Signature:**

Customer Name:	Customer Signature:	Date:	Purchase Order:
<b>Customer Billing Address</b> (please populate if different from Invoice-To above):			

**Note:**

For Budgetary Purposes Only. Prices are subject to change without notice.

\*TRAIL quotation: (On demand services)

- \* TRAIL Charge - Up to 2 hours initial labor and travel up to 100 Miles. Please be advised of the other TRAIL responsetimes you can choose:
- \* Priority Response, 2-4 days response time
- \* Standard Response, 6 or more days response time
- \* Labor in excess of the 2 hours will be charged at labor rate 378.00 per hour.
- \* Please request a copy of the Agilent On-Demand Services for additional information on Agilent On-Demand services.
- \* For payment, please contact us at any of the methods listed above in the Direct Inquiries to: section. For Credit Card Payment, please contact us by phone.
- \* If an order for service is not placed within 30 days from the budgetary quotation date, then a new budgetary quotation will be issued. (If required)
- \* If additional parts, consumables, or supplies are required, the current list price will be charged for them. Parts used for repairs, where the instrument is passed its end of service dates, are contingent upon availability.
- \* Unless otherwise indicated herein, products referenced in this document will receive a 90 day replacement warranty.
- \* If a refurbished/exchanged part becomes unavailable, the new part will be substituted which will increase the price.

This Quotation is valid only for the period indicated. All Services quoted are subject to the Agilent Service Terms ([http://www.chem.agilent.com/en-US/products-services/Services/Pages/e16S\\_us\\_canada\\_mexico.aspx](http://www.chem.agilent.com/en-US/products-services/Services/Pages/e16S_us_canada_mexico.aspx)) and the Agilent Service Exhibits referenced above. Products, parts and software are subject to the Agilent Terms of Sale ([http://www.chem.agilent.com/en-US/products-services/Services/Pages/e16S\\_us\\_canada\\_mexico.aspx](http://www.chem.agilent.com/en-US/products-services/Services/Pages/e16S_us_canada_mexico.aspx)). Products or Services that are manufactured, configured or adapted to meet Customer's requirements are subject to the Agilent Terms of Sales - Custom products ([http://www.chem.agilent.com/en-US/products-services/Services/Pages/e16S\\_us\\_canada\\_mexico.aspx](http://www.chem.agilent.com/en-US/products-services/Services/Pages/e16S_us_canada_mexico.aspx)). If you have a previously signed agreement with Agilent covering such Products, Services or spare parts, the terms of that agreement will take precedence for those Products, Services or spare parts. Agilent expressly objects to any different or additional terms in your purchase/sales order documentation, unless agreed to in writing by Agilent. Spare parts and Service availability dates are estimated at the time of the quotation. Actual delivery dates or delivery windows will be specified at the time Agilent acknowledges and accepts your purchase order. The above conditions shall apply to the fullest extent permitted by the law governing this transaction and shall not derogate from any statutory or legal rights you may have thereunder. Commodities, technology or software exported from the United States of America ("U.S.") or from other exporting countries will be subject to the U.S. Export Administration Regulations and all exporting countries' export laws and regulations. Diversion contrary to U.S. law and the applicable export laws and regulations is prohibited. Warranty: Unless otherwise indicated herein, spare parts referenced in this document will receive a 90 day replacement warranty.

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AUSTIN TX 78724  
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**Location:**

**Room**  
**Bldg**  
**Lab**  
**Dept**

**BUDGETARY QUOTATION**

<b>Budgetary Quotation Number:</b> 3000243935	<b>Budgetary Quotation Date:</b> April 30, 2018
<b>Model Number:</b> G3286A	<b>Model Description:</b> ASX-500 Series Autosampler
<b>Serial Number:</b> [REDACTED]	<b>Quotation Expiration Date:</b> May 30, 2018
<b>Payment Terms:</b> Net 30 days	<b>Acceptance Method for Quotation:</b> Purchase Order or Credit Card
<b>Service Request Number:</b> 8101877094	

**Direct Inquiries to:**

Contact Name: AFO Quotes team  
Contact Email: [tradeservices@agilent.com](mailto:tradeservices@agilent.com)  
Contact Telephone: 1 800 227 9770 X 7648  
Contact Fax: 1 302 993 5963

**Service Request Problem Description:** Repair STD Response

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Agilent Technologies Inc  
5301 Stevens Creek Blvd  
Santa Clara CA 95051  
United States

Federal Tax ID: [REDACTED]

Beneficiary Bank: Bank of America  
SWIFT: BOFAUS3N  
Beneficiary Account: 12331-31561  
Beneficiary Name: Agilent Technologies Inc

ORIGINAL

**Budgetary Quotation Date:** April 30, 2018

Item #	Description	Charge Type	Qty / Hour	Unit Price	Total Price (USD)
1000	Repair	Trail Charge	1.00	1,575.00	1,575.00
1000		Labor Charge	8.00	378.00	3,024.00
1000		Service Subtotal			4,599.00
				Total Price before Tax	4,599.00
				Sales Tax 0.000%	0.00
				Total Price	4,599.00

**Customer Signature:**

Customer Name:	Customer Signature:	Date:	Purchase Order:
<b>Customer Billing Address</b> (please populate if different from Invoice-To above):			

**Note:**

For Budgetary Purposes Only. Prices are subject to change without notice.

\*TRAIL quotation: (On demand services)

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State of Delaware  
Office of the Secretary of State

---

PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS FILED FROM AND INCLUDING THE RESTATED CERTIFICATE OF "AGILENT TECHNOLOGIES, INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

RESTATED CERTIFICATE, CHANGING ITS NAME FROM "HP MEASUREMENT, INC." TO "AGILENT TECHNOLOGIES, INC.", FILED THE THIRTIETH DAY OF JULY, A.D. 1999, AT 4:30 O'CLOCK P.M.

CERTIFICATE OF OWNERSHIP, FILED THE TWENTY-EIGHTH DAY OF FEBRUARY, A.D. 2000, AT 9 O'CLOCK A.M.

CERTIFICATE OF OWNERSHIP, FILED THE FOURTH DAY OF MAY, A.D. 2000, AT 9 O'CLOCK A.M.



A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

3038546 8100X

001251950

AUTHENTICATION: 0444469

DATE: 05-17-00

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
HP MEASUREMENT, INC.**

HP Measurement, Inc., a corporation organized and existing under the laws of the State of Delaware, does hereby certify:

1. The name of the corporation is HP Measurement, Inc. HP Measurement, Inc. was originally incorporated under the same name, and the original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on May 4, 1999.

2. Pursuant to Sections 242 and 228 of the General Corporation Law of the State of Delaware, the amendments and restatement herein set forth have been duly approved by the Board of Directors and stockholders of HP Measurement, Inc.

3. Pursuant to Section 245 of the General Corporation Law of the State of Delaware, this Amended and Restated Certificate of Incorporation restates and integrates and amends the provisions of the Amended and Restated Certificate of Incorporation of this corporation.

4. The text of the Restated Certificate of Incorporation is hereby restated and amended to read in its entirety as follows:

**ARTICLE I**

The name of the Corporation is Agilent Technologies, Inc. (the "Corporation").

**ARTICLE II**

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, Wilmington, Delaware 19801, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

**ARTICLE III**

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended.

#### ARTICLE IV

The Corporation is authorized to issue two classes of stock to be designated, respectively, Common Stock, par value \$0.01 per share ("Common Stock") and Preferred Stock, par value \$0.01 per share ("Preferred Stock"). The total number of shares of Common Stock that the Corporation shall have authority to issue is 2,000,000,000. The total number of shares of Preferred Stock that the Corporation shall have authority to issue is 125,000,000. The Preferred Stock may be issued from time to time in one or more series.

The Corporation shall from time to time in accordance with the laws of the State of Delaware increase the authorized amount of its Common Stock if at any time the number of shares of Common Stock remaining unissued and available for issuance shall not be sufficient to permit conversion of all outstanding Preferred Stock.

The Board of Directors is hereby authorized, subject to limitations prescribed by law and the provisions of this Article IV, by resolution to provide for the issuance of the shares of Preferred Stock in one or more series, and to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, privileges, preferences, and relative participating, optional or other rights, if any, of the shares of each such series and the qualifications, limitations or restrictions thereof.

The authority of the Board of Directors with respect to each series shall include, but not be limited to, determination of the following:

A. The number of shares constituting that series (including an increase or decrease in the number of shares of any such series (but not below the number of shares in any such series then outstanding)) and the distinctive designation of that series;

B. The dividend rate on the shares of that series, whether dividends shall be cumulative, and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series;

C. Whether that series shall have the voting rights (including multiple or fractional votes per share) in addition to the voting rights provided by law, and, if so, the terms of such voting rights;

D. Whether that series shall have conversion privileges, and, if so, the terms and conditions of such privileges, including provision for adjustment of the conversion rate in such events as the Board of Directors shall determine;

E. Whether or not the shares of that series shall be redeemable, and, if so, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable, and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption rates;

F. Whether that series shall have a sinking fund for the redemption or purchase of shares of that series, and, if so, the terms and the amount of such sinking funds;

G. The rights of the shares of that series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of shares of that series; and

H. Any other relative rights, preferences and limitations of that series.

No holders of shares of the Corporation of any class, now or hereafter authorized, shall have any preferential or preemptive rights to subscribe for, purchase or receive any shares of the Corporation of any class, now or hereafter authorized, or any options or warrants for such shares, or any rights to subscribe for, purchase or receive any securities convertible to or exchangeable for such shares, which may at any time be issued, sold or offered for sale by the Corporation, except in the case of any shares of Preferred Stock to which such rights are specifically granted by any resolution or resolutions of the Board of Directors adopted pursuant to this Article IV.

#### ARTICLE V

Effective as of the time at which Hewlett-Packard Company, a Delaware corporation, and its affiliates shall cease to be the beneficial owner of an aggregate of at least a majority of the then outstanding shares of Common Stock (the "Trigger Date"), any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders. Effective as of the Trigger Date, except as otherwise required by law and subject to the rights of the holders of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation, special meetings of stockholders of the Corporation for any purpose or purposes may be called only by the Board of Directors or by the Chairman of the Board of Directors of the Corporation and, effective as of the Trigger Date, any power of stockholders to call a special meeting is specifically denied. No business other than that stated in the notice shall be transacted at any special meeting.

#### ARTICLE VI

The Corporation is to have perpetual existence.

#### ARTICLE VII

For the management of the business and for the conduct of affairs of the Corporation, and in further definition, limitation and regulation of powers of the Corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

A. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The number of directors of this Corporation shall be fixed and may be changed from time to time by resolution of the Board of Directors.

B. The Directors, other than those who may be elected by the holders of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation, shall be classified, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as possible, one class to be originally elected for a term expiring at the annual meeting of stockholders to be held in 2000, another class to be originally elected for a term expiring at the annual meeting of stockholders to be held in 2001, and another class to be originally elected for a term expiring at the annual meeting of stockholders to be held in 2002, with each class to hold office until its successor is duly elected and qualified. At each succeeding annual meeting of stockholders, directors elected to succeed those directors whose terms then expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election.

C. Notwithstanding the foregoing provisions of this Article VII, each director shall serve until his or her successor is duly elected and qualified or until his or her death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

D. Any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal, or other causes unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, and except as otherwise provided by law, shall be filled only by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors and not by the stockholders.

E. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation.

F. The directors of the Corporation need not be elected by written ballot unless the Bylaws of the Corporation so provide.

G. Advance notice of stockholder nomination for the election of directors and of any other business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws of the Corporation.

## ARTICLE VIII

A. To the fullest extent permitted by the Delaware General Corporation Law as the same exists or as may hereafter be amended, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

B. The Corporation may indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director, officer or employee of the Corporation or any predecessor of the Corporation or serves or served at any other enterprise as a director, officer or employee at the request of the Corporation or any predecessor to the Corporation.

C. Neither any amendment nor repeal of this Article VIII, nor the adoption of any provision of this Corporation's Certificate of Incorporation inconsistent with this Article VIII, shall eliminate or reduce the effect of this Article VIII, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VIII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.


### ARTICLE IX

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the laws of the State of Delaware) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

## ARTICLE X

Except as provided in Article VIII above, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by the laws of the state of Delaware, and all rights conferred upon stockholders herein are granted subject to this reservation. Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 80% of the voting power of all shares of the Corporation entitled to vote generally in the election of directors (the "Voting Stock") then outstanding, voting together as a single class shall be required to alter, amend, adopt any provision inconsistent with or repeal Article V or VII or this sentence.

IN WITNESS WHEREOF, HP Measurement, Inc. has caused this Amended and Restated Certificate of Incorporation to be executed by D. Craig Nordlund, its Secretary this 29th day of July 1999.

  
D. Craig Nordlund



**CERTIFICATE OF OWNERSHIP AND MERGER OF THE SILICON VALLEY  
NETWORKING LAB, INC. INTO AGILENT TECHNOLOGIES, INC.**

Robert R. Walker and D. Craig Nordlund certify that:

1. They are the Senior Vice President and Chief Executive Officer and Secretary, respectively, of Agilent Technologies, Inc., a Delaware corporation ("Agilent").
2. Agilent owns all the outstanding shares of The Silicon Valley Networking Lab, Inc., a California corporation (the "Company").
3. On January 18, 2000, the Executive Committee of the Board of Directors of Agilent duly adopted the following resolutions:

WHEREAS, Agilent owns 100% of the outstanding shares of the Company; and

WHEREAS, it is deemed in the best interest of Agilent to effect a merger of that subsidiary into Agilent;

NOW, THEREFORE, BE IT RESOLVED: That Agilent merge the Company, its wholly-owned subsidiary corporation, into itself and assume all its liabilities and obligations pursuant to Section 253 of the General Corporation Law of Delaware; and approved in accordance with the laws under which it is incorporated;

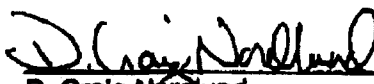
RESOLVED FURTHER: That any officer of Agilent shall be and each hereby is authorized to take all such actions and to execute, verify, and file all documents necessary to cause the merger of the Company into Agilent pursuant to Section 253 of the General Corporation Law of Delaware and Section 1110 of the California Corporations Code; and

RESOLVED FURTHER: That the shares of the Company owned by Agilent shall be surrendered to the Company for cancellation in consideration of the transfer of the assets of the Company to Agilent; and

RESOLVED FURTHER: That the effective date of this merger shall be the date on which the certificate of merger is filed.

Date: January 31, 2000

  
Robert R. Walker  
Senior Vice President and  
Chief Executive Officer

  
D. Craig Nordlund  
Secretary

**CERTIFICATE OF OWNERSHIP AND MERGER OF PETE, INC. INTO AGILENT TECHNOLOGIES, INC.**

Robert R. Walker and D. Craig Nordlund certify that:

1. They are the Senior Vice President and Chief Financial Officer and Secretary, respectively, of Agilent Technologies, Inc., a Delaware corporation ("Agilent").
2. Agilent owns all the outstanding shares of Pete, Inc., a Delaware corporation (the "Company").
3. On May 2, 2000, the Executive Committee of the Board of Directors of Agilent duly adopted the following resolutions:

**WHEREAS**, Agilent owns 100% of the outstanding shares of the Company; and

**WHEREAS**, it is deemed in the best interest of Agilent to effect a merger of that subsidiary into Agilent;


**NOW, THEREFORE, BE IT RESOLVED:** That Agilent merge the Company, its wholly-owned subsidiary corporation, into itself and assume all its liabilities and obligations pursuant to Section 253 of the General Corporation Law of Delaware; and

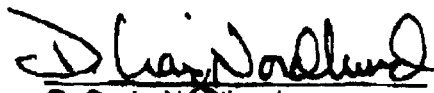
**RESOLVED FURTHER:** That any officer of Agilent shall be and each hereby is authorized to take all such actions and to execute, verify, and file all documents necessary to cause the merger of the Company into Agilent pursuant to Section 253 of the General Corporation Law of Delaware; and

**RESOLVED FURTHER:** That the shares of the Company owned by Agilent shall be surrendered to the Company for cancellation in consideration of the transfer of the assets of the Company to Agilent; and

**RESOLVED FURTHER:** That the effective date of this merger shall be the date on which the certificate of merger is filed.

Date: May 3, 2000

  
Robert R. Walker  
Senior Vice President and  
Chief Financial Officer

  
D. Craig Nordlund  
Secretary



## **Agilent Technologies**

### **Warranty Terms**

1. Each Product will receive a global warranty. A global warranty includes the standard warranty for the country of purchase. If a Product is moved to another country, the destination country's standard warranty will apply except for on-site warranty where Agilent does not have an applicable Product specific support presence or authorized representative in that country.
2. The warranty period begins on acceptance. Customer may receive a different warranty when the Product is purchased as part of a system.
3. Agilent warrants the Agilent hardware Product against defects in materials and workmanship and that the Product will conform to specifications. Agilent warrants that Software will not fail to execute its programming instructions due to defects in materials and workmanship when properly installed and used on the hardware designated by Agilent. Agilent warrants that Agilent owned standard Software substantially conforms to Specifications. Agilent does not warrant that Software will operate in hardware and software combinations selected by Customer, or meet requirements specified by Customer.
4. Agilent does not warrant that the operation of Products will be uninterrupted or error free.
5. If Agilent receives notice of defects or non-conformance during the warranty period, Agilent will, at its option, repair or replace the affected Product. Customer will pay shipping expenses for return of such Product to Agilent. Agilent will pay expenses for shipment of repaired or replacement Product. If Agilent is unable, within a reasonable time, to repair or replace the affected Product(s), Customer will be entitled to a refund of the purchase price upon prompt return of the Product(s) to Agilent.
6. Agilent warrants that Agilent Service will be provided in a professional and workmanlike manner. For ninety (90) days from the date of repair, Agilent will replace, at no charge, defective parts used in Agilent's repair of Products.
7. Some newly manufactured Agilent Products may contain and Agilent Service may use remanufactured parts which are equivalent to new in performance.
8. Customer's Product warranty is transferable upon Agilent's receipt of written notification. Such notification must include the serial number, model number and the name, address and location of transferee and the transferee must agree in writing to Agilent's warranty terms.
9. Agilent reserves the right to invalidate Customer's warranty for Product with an on-site warranty, or Product that has been installed by Agilent, in the event Customer relocates such Product. Customer's warranty for such Product may be reinstated provided Agilent verifies, at Customer's expense, that such Product is in good operating condition.
10. The above warranties do not cover defects resulting from improper or inadequate maintenance, installation, repair or calibration performed by Customer or a third party not authorized by Agilent; Customer or third party supplied hardware or software, interfacing or supplies; unauthorized modification; improper use or operation outside of the Specification for the Product; abuse, negligence, accident, loss or damage in transit; or improper site preparation.
11. THE WARRANTIES IN THESE TERMS ARE EXCLUSIVE, AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. AGILENT SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.



Glenn Hegar  
Texas Comptroller of Public Accounts



## **Delaware Resident Bidder Preference**

Delaware Code, Title 29, §6962. Preference in employment is given for Delaware laborers, workers or mechanics in the construction of all public works for the State of Delaware or any political subdivision thereof, or by firms contracting with the State or any political subdivision thereof. Each public works contract for the construction of public works for the State of Delaware or any political subdivision thereof shall contain a stipulation that any person, company or corporation who violates this section shall pay a penalty equal to the amount of compensation paid to any person in violation of this section.



Glenn Hegar  
Texas Comptroller of Public Accounts



## California Resident Bidder Preference

California Government Code, §4361. Preference is given in contracts and purchases for any public use to agricultural aircraft operators who are California residents if their bids do not exceed by more than 5.0% the lowest bids of nonresident agricultural aircraft operators.

California Government Code, §15813.3. In making contracts for the purchase, lease, or creation of works of art for California state buildings, preference may be given to artists who are California residents.

California Government Code, §§14835-14843. In solicitations where an award is to be made to the lowest responsible bidder meeting specifications, the preference to small business and microbusiness is 5.0% to the lowest responsible bidder meeting specifications. Definition of "small business" includes requirement that the principal office of the business is located in California, and that the businesses' officers are domiciled in California. The preference to non-small business bidders that provide for small business or microbusiness subcontractor participation is subject to rules and regulations of the Department of General Services and limited to a maximum of 5.0% to the lowest responsible bidder meeting specifications. In solicitations where an award is to be made to the highest scored bidder based on evaluation factors in addition to price, the preference to small business or microbusiness is 5.0% of the highest responsible bidder's total score. The preference to non-small business bidders that provide for small business or microbusiness subcontractor participation is subject to rules and regulations of the Department of General Services and limited to a maximum 5.0% of the highest responsible bidder's total score. The maximum small business preference shall not exceed \$50,000 for any bid and the combined cost for preferences granted by law shall not exceed \$100,000.

California Government Code, §4530-4535.3. Preferences are provided for California based companies submitting bids or proposals for state contracts to be performed at worksites in distressed areas by persons with a high risk of unemployment when the contract is for goods or services in excess of \$100,000. Sections are discussed in more detail below.

California Government Code, §4533. When the state prepares a solicitation for contracts for goods in excess of \$100,000, except a contract in which the worksite is fixed by the provisions of the contract, a preference of 5.0% is awarded to California-based companies for which at least 50% of the labor hours required to manufacture the goods and perform the contract shall be accomplished at a worksite or worksites located in a distressed area.

California Government Code, §4533.1. Where a bidder complies with §4533 or the worksite(s) where at least 50% of the labor required for contract performance is within commuting distance of a distressed area, percentage preferences are awarded for bidders that agree to hire persons with high risk of unemployment. The preference percentage is based on the percentage of such persons the bidder agrees to hire as a percentage of its work force during the period of contract performance: 1.0% preference for hiring of 5.0% to 9.0% of the bidder's workforce, 2.0% preference for hiring of 10% to 14% of the bidder's workforce, 3.0% for hiring of 15% to 19% of the bidder's workforce, and 4.0% preference for hiring of 20% or more of the bidder's workforce.

California Government Code, §4534. In evaluating proposals for contracts for services in excess of \$100,000, except if the worksite is fixed by the provisions of the contract, a preference of 5.0% is awarded to California based companies for which no less than 90% of the total labor hours required for the contract is performed at a worksite or worksites located in a distressed area.

California Government Code, §4534.1. Bidders complying with §4534 are awarded additional preferences as set forth in §4533.1.

California Government Code, §4535.2. The maximum preference a bidder may be awarded is 15%, not to exceed \$50,000 or, if combined with other preferences and provisions of law, not to exceed \$100,000. Small business bidders qualified in accordance with §14838 shall have precedence over non-small business bidders such that application of bidder preferences for non-small business bidders shall not result in denial of award to a small business bidder when the small business bidder is the lowest responsible bidder or when the small business bidder is eligible for the award due to the 5.0% small business bidder preference.

California Code of Regulations, Title 2, §1896.101. When a state agency prepares an invitation for bid (IFB) for a contract for the purchase of goods exceeding \$100,000, except a contract where the worksite will be fixed by the terms of the contract, the IFB must provide for a preference of 5.0% for California-based companies for which no less than 50% of the labor required to perform the contract shall be accomplished at a worksite or worksites located in a program area.

California Code of Regulations, Title 2, §1896.102. Additional preferences awarded to bidder complying with §1896.71 (Commercially Useful Function) from 1.0% to 4.0% in accordance with California Government Code, §7095(b) if bidder to hire the specified percentage of persons living in a high intensity unemployment area or enterprise zone qualified employees during term of contract performance.

California Code of Regulations, Title 2, §1896.104. When a state agency prepares an IFB or RFP for a contract for services exceeding \$100,000, except an IFB or RFP where the worksite will be fixed by the terms of the contract, the IFB or RFP must provide for a 5.0% preference for California-based companies that shall perform the contract at a worksite or worksites located in a program area.

California Code of Regulations, Title 2, §1896.105. Additional preferences awarded to bidder complying with §1896.74 (Disabled Veteran Business Enterprise Participation) from 1.0% to 4.0% in accordance with California Government Code, §7095(b) if bidder to hire the specified percentage of persons living in a high intensity unemployment area or enterprise zone qualified employees during term of contract performance.

California Code of Regulations, Title 2, §1896.6. Small businesses granted the 5.0% small business preference when non-small business has submitted lowest-priced, highest scored bid ranked pursuant to §1896.8. Non-small businesses granted a 5.0% preference when non-small business has submitted lowest-priced, highest scored bid ranked pursuant to §1896.8 and the non-small business has included in its bid a commitment to subcontract at least 25% of its net bid price with one or more small business(es).

California Code of Regulations, Title 2, §1896.8. When awarding to lowest responsible bidder, the 5.0% small business or non-small business subcontractor preference is computed from the lowest responsive and responsible non-small or non-small subcontractor business bidders bid and subtracted from the bid amount of the small business or non-small business subcontractor, as applicable. When awarding based on highest scored proposal with evaluation weighing factors other than price, the 5.0% small business or non-small subcontractor business preference is limited to bids deemed responsive and of acceptable quality and is computed as a number that represents preference point as specified in the solicitation. The amount of small business or non-small business subcontractor preferences awarded on a single bid shall not exceed \$50,000 and the combined cost of the small business or non-small business subcontractor preference and preferences awarded pursuant to other law shall not exceed \$100,000.

California Code Register, Title 2, §1896.12. Eligibility for certification as small business includes requirements that the principal office be located in California and that owners be domiciled in California.

California Code Register, Title 2, §1896.31. When a state agency prepares an IFB for a contract for purchase of goods in excess of \$100,000, except a contract where the worksite will be fixed by the terms of the contract, the IFB shall provide for a 5.0% preference for California based companies for which no less than 50% of labor shall be accomplished at a worksite or worksites located in a distressed area.

California Code Register, Title 2, §1896.32. Additional preferences from 1.0% to 4.0% in accordance with California Government Code, §4533.1 shall be awarded where a bidder complies with rule 1896.31 if the bidder will hire the specified percentage of persons with high risk of unemployment during the period of contract performance.

California Code Register, Title 2, §1896.34. When a state agency prepares an IFB or RFP for a contract for services in excess of \$100,000, except an IFB or RFP where the worksite will be fixed by



the terms of the contract, the IFB or RFP shall provide for a 5.0% price preference for California based companies that will perform the contract at a worksite or worksites located in a distressed area.

California Code Register, Title 2, §1896.35. Additional preferences from one to four percent in accordance with California Government Code, §4534.1 shall be awarded where a bidder complies with rule 1896.34 if the bidder will hire the specified percentage of persons with high risk of unemployment during the period of contract performance.

## **CALIFORNIA RECIPROCAL PREFERENCE**

California Public Contract Code, §6107. When awarding contracts for construction, a state agency shall grant a California company a reciprocal preference as against a nonresident contractor from any state that gives or requires a preference to be given contractors from that state on its public entity construction contracts. The amount of the reciprocal preference shall be equal to the amount of the preference applied by the state of the nonresident contractor with the lowest responsive bid, except where the resident contractor is eligible for a California small business preference, in which case the preference applied shall be the greater of the two, but not both. If the contractor submitting the lowest responsive bid is not a California company and has its principal place of business in any state that gives or requires the giving of a preference on its public entity construction contracts to contractors from that state, and if a California company has also submitted a responsive bid, and, with the benefit of the reciprocal preference, the California company's bid is equal to or less than the original lowest responsive bid, the public entity shall award the contract to the California company at its submitted bid price.