



Amendment No. 2  
to  
Contract No. GS190000002  
for  
Baggage Handling Systems Parts  
Between  
Siemens Logistics, LLC  
and the  
City of Austin, Texas

- 1.0 The City hereby amends the referenced Contract to revise the ship to or delivery location for the Department of Aviation Maintenance Warehouse. Effective March 1, 2020 the Department of Aviation Maintenance Warehouse will relocate to the following address:

Department of Aviation  
Maintenance Warehouse  
9401 Cargo Avenue, Suite 700  
Austin, TX 78719

To ensure shipments are made to the correct address, the Contractor shall use the "Ship To" address listed on the City purchase document.

- 2.0 The total contract amount is unchanged and recapped below:

Action	Action Amount	Total Contract Amount
Initial term: 03/27/2019-03/26/2024	\$665,000.00	\$665,000.00
Amendment No. 1: ABIA delivery address change	\$0.00	\$665,000.00

- 3.0 MBE/WBE goals were not established for this Contract.
- 4.0 By signing this Amendment, the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

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

Signature & Date: **Vaughan Jerome**  
Digitally signed by Vaughan Jerome  
DN: cn=Vaughan Jerome,  
o=Siemens,  
email=jerry.vaughan@siemens-  
logistics.com  
Date: 2020.04.03 11:44:52 -05'00'

Printed Name: \_\_\_\_\_  
Authorized Representative

Siemens Logistics, LLC  
2700 Esters Blvd  
DFW Airport, Tx 75261  
Contact: Tobias Kirves

Signature & Date: **Claudia Rodriguez**  
Digitally signed by Claudia Rodriguez  
Date: 2020.04.28 09:12:56 -05'00'

Printed Name: Claudia Rodriguez  
Title: Procurement Specialist IV

City of Austin  
Purchasing Office  
124 West 8th Street  
Austin, TX 78701  
512-974-2959  
ClaudiaR.Rodriguez@austintexas.gov

Secchio Jr Charles  
Digitally signed by Secchio Jr Charles  
DN: cn=Secchio Jr Charles,  
o=Siemens,  
email=charles.secchio\_jr@siemens-  
logistics.com  
Date: 2020.04.03 10:34:30 -05'00'



Amendment No. 1  
to  
Contract No. GS190000002  
For  
Baggage Handling Systems Parts  
Between  
Siemens Postal, Parcel & Airport Logistics, LLC  
and the  
City of Austin

1.0 The Contract is hereby amended as follows: Change the vendor information as requested and documented by the vendor.

	From	To
Vendor Name	Siemens Postal, Parcel & Airport Logistics, LLC	Siemens Logistics, LLC
Vendor Code	V00000917453	V00000917453
FEIN	[REDACTED]	[REDACTED]

2.0 All other terms and conditions of the Contract remain unchanged and in full force and effect.

**BY THE SIGNATURE** affixed below, this Amendment No. 1 is hereby incorporated into and made a part of the Contract.

A handwritten signature in blue ink that reads "Linell Goodin-Brown".

Linell Goodin-Brown  
Contract Management Supervisor II  
City of Austin, Purchasing Office

10-1-19

Date

**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
SIEMENS POSTAL, PARCEL & AIRPORT LOGISTICS, LLC  
FOR  
BAGGAGE HANDLING SYSTEM PARTS  
MA 8100 GS190000002**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Siemens Postal, Parcel & Airport Logistics, LLC ("Contractor"), having offices at 2700 Esters Blvd. Suite 200B, DFW Airport, TX 75261.

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

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

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for providing the commodities identified in Section 2. In the event that the need arises for the Contractor to provide deliverables beyond those stated in the Section 2, the Contractor and the City shall negotiate mutually agreeable terms and compensation for such.

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

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Astrid Martin, Phone: (972) 947-7422, Email Address: [astrid.martin@siemens.com](mailto:astrid.martin@siemens.com). The City's Contract Manager for the engagement shall be Mike Robinson, (512) 530-7504, Email Address: [mike.robinson@austintexas.gov](mailto:mike.robinson@austintexas.gov). The City's and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

**SECTION 2. SCOPE OF WORK**

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2.2 The Contractor shall have a full-time operations facility with a permanent business address. The Contractor shall be regularly engaged in the business of providing Baggage Handling System (BHS) parts.

2.3 The Contractor shall have a functional email address and telephone and be able to provide service to the City within 24 hours of notice by the City.

2.4 The Contractor shall provide a Single Point of Contact (SPOC) who has full decision-making authority under the Contract. The SPOC shall be English speaking, and neither a supervisor nor field technician.

2.5 The Contractor shall provide BHS replacement parts on an as needed basis for the Austin Bergstrom International Airport ("ABIA"). The City will specify order quantities with each order. There are no minimum order quantities.

2.6 The Contractor shall have access to BHS parts in inventory.

2.7 The Contractor shall provide the City with BHS parts that are new and packaged in the original equipment manufacturer (OEM) box.

2.8 The Contractor shall notify the Contract Manager of recall notices, warranty replacements, safety notices or any other applicable notices within fifteen (15) calendar days of the Contractor's notice of such issues.



2.9 The City will provide a point of contact at each work site with whom all communication shall be initiated, coordinated and approved.

2.10 **Delivery Requirements.** The Contractor shall deliver shipments on weekdays (Monday – Friday) between the hours of 7:00 AM CST and 5:00 PM CST to:

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Austin-Bergstrom International Airport (ABIA)

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Maintenance Control/Warehouse

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9400 Freight Lane-Suite A

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Austin, Texas 78719-2301

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2.10.1 Delivery is to be made within based on a mutually agreed upon delivery schedule. All orders must be shipped complete unless arrangements for partial shipments are made in advance. Unless requested by the City, deliveries shall not be made on City-recognized legal holidays.

2.10.2 The Contractor shall confirm the quantity to be shipped on all orders within two (2) hours of notification by phone from the City.

2.10.3 The Contractor shall deliver all Rush Orders placed by the City within the next business day. "Rush Order" shall be clearly stated in the City's order request (Delivery Order). Rush Orders are defined as critical to providing services to the public to the extent that the City is willing to pay express shipping charges. The Contractor shall indicate "Rush Order" on the applicable invoices to match the designated Delivery Order from the City.

2.10.3.1 The Contractor shall honor the Rush Order pricing as indicated in the Price Sheet, without any additional markups to the parts prices charged to the City for regular orders.

2.10.4 The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the description of each item, quantity ordered, quantity shipped, unit price, purchase order number (Delivery Order number).

## 2.11 **Other Tasks.**

2.11.1 Provide manufacturer authorized training to City personnel as requested by the City. The City anticipates requiring training at least once per calendar year with three (3) training sessions per visit to train three (3) shifts of City employees. Each training session (shift session) will have approximately eight (8) City employees in attendance. The training sessions for the High-Speed Diverters will be three (3) eight (8) hour classes for a total of twenty-four (24) training hours. The training session for the Vertical Sorter Units will be three (3) five (5) hour classes for a total of 15 training hours. The Contractor will provide hands-on, lecture and on-demand training with a focus on hands-on guidance. The City will provide a working High-Speed Diverter and Vertical Sorter Unit for the field training. The City will schedule and mutually agree with the Contractor on dates and times for training sessions. The Contractor shall provide all materials, tools and manuals/guides or other printed materials for the training sessions.

## SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid an amount not-to-exceed \$665,000 for all fees and expenses upon the successful delivery of the goods and services, as described herein.

## 3.2 **Published Price Lists.**

3.2.1 The Contractor 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. The discount must remain firm during the life of the Contract. Alternatively, the Contractor 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.

3.2.2 Two (2) copies of the list upon which the discounts or markups are based shall be submitted with the Offer. All price lists 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 Contractors name, Contract 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.

3.2.3 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 Contract Manager with the effective date of change to be at least 30 calendar days (30 unless a different period is inserted) after written notification. The City reserves the right to refuse any list revision.

3.2.4 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.

3.2.5 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.

### 3.3 **Economic Price Adjustment.**

3.2.1 **Price Adjustment.** Prices shown in this Contract shall remain firm for the first thirty-six (36) month period 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 ten percent (10%) 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.

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

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

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

3.2.4.1 The following definitions apply:

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

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

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

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

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

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

3.2.4.2.1 Utilize final Compilation data instead of Preliminary data

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

3.2.4.3 **Index Identification.**

Weight % of Base Price: 100%
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Database Name: Producer Price Index Commodity Data	
Series ID: WPU11440214	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Description of Series ID: Machinery and equipment – Parts and Accessories for Unit Handling Conveyors & Conveying Systems, Sold Separately	
This Index shall apply to the following items of the Price Sheet: All	

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

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

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

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

3.4 **Invoices.**

3.4.1 The Contractor shall submit separate invoices in duplicate on each purchase order or delivery order 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.

3.4.2 **Invoices shall contain 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. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be 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. Invoices shall be mailed to the below address:

	City of Austin
Department	Department of Aviation
Attn	Accounts Payable
Address	3600 Presidential Blvd. Suite 411
City, State, Zip Code	Austin, TX 78719
Email	<a href="mailto:abia.invoices@austintexas.gov">abia.invoices@austintexas.gov</a>

3.4.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.4.4 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.

3.5 **Payment.**

3.5.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.5.2 **If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment**

hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

3.5.3 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:

3.5.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.5.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.5.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

3.5.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.5.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.5.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.5.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.5.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.5.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.6 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.7 **Restocking fees:**

3.7.1 The Contractor may bill the City restocking fees (if included in their Offer) for parts that are ordered by the City under the contract and returned for refund. The Contractor is not obligated to accept for refund any part that is not resalable and/or not in the same condition as when purchased.

3.7.2 Restocking fees may be charged to the City when multiple parts or groups of parts are returned for refund at one time due to the City inventory warehouse cleaning, unless these parts are returned at an annual pre-arranged date. The date for the annual return shall be mutually agreed upon between the City and the Contractor.

3.8 **Final Payment and Close-Out.**

3.8.1 The making and acceptance of final payment will constitute:

3.8.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

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

**SECTION 4. TERM AND TERMINATION**

4.1 **Term of Contract.** The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for a term of sixty (60) months.

4.1.1 Upon expiration of the 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 (not exceed 120 calendar days unless mutually agreed on in writing).

4.1.2 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.

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

## **SECTION 5. OTHER DELIVERABLES**

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

### **5.1.1 General Requirements.**

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



5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

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

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

OR

[PURInsuranceCompliance@austintexas.gov](mailto:PURInsuranceCompliance@austintexas.gov)

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

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

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

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

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

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

5.1.2.1.2 Contractor/Subcontracted Work.

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

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

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

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

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

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

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

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

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

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

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

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

5.1.2.4 **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.

5.2 **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.

5.3 **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.

5.4 **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.

5.5 **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.

5.6 **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.

5.7 **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.

5.8 **Workforce Security Clearance and Identification (ID).**

5.8.1 **Airport Security:** Access to the premises must be strictly controlled. Officers, employees, or agents of the Contractor shall never enter a restricted or operational area of the airport without the express permission of ABIA or any governmental bodies having jurisdiction. Contractor assumes full liability from any such unauthorized incursions.

5.8.2 **Security Badges:** Contractor personnel will be required to display company/employer-issued photo ID 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.

5.8.3 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.

5.9 **Equal Opportunity.**

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

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



5.10 **Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

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

5.11 **Acceptance of Incomplete or Non-Conforming Deliverables.** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.12 **Delays.**

5.12.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.12.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.13 **Ownership And Use Of Deliverables.** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.13.1 **Patents.** As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

5.13.2 **Copyrights.** As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this paragraph shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.



5.13.3 **Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms herein.

5.14 **Rights to Proposal and Contractual Material.** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.15 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

## **SECTION 6. WARRANTIES**

### **6.1 Warranty – Price.**

6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.2 **Warranty – Deliverables.** The Contractor warrants and represents that all Deliverables sold 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, 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 herein, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.

6.2.1 Recycled Deliverables shall be clearly identified as such.

6.2.2 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.

6.2.3 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.

6.2.4 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 the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.

6.2.5 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.

6.2.6 The Contractor shall provide a copy of the parts warranty to the City's Contract Manager within thirty (30) calendar days of the Contract effective date and within five (5) business days of any subsequent request by the City.

## **SECTION 7. MISCELLANEOUS**

7.1 **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 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.

### **7.2 Workforce.**

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

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

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

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 **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, ABIA and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

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

7.4.1 disposal of major assets;

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

7.4.3 any significant termination or addition of provider contracts;

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

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

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

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

## 7.5 **Audits and Records.**

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

### 7.5.2 Records Retention:

7.5.2.1 Contractor is subject to City Code 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

7.5.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City

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

7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

## 7.7 **Indemnity.**

### 7.7.1 Definitions:

7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

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

**7.7.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

**7.8 Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

**7.9 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 City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Siemens Postal, Parcel, & Airport Logistics, LLC

ATTN: Contract Manager

2700 Esters Blvd., Suite 200B

DFW Airport, TX 75261

**7.10 Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.



7.11 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.12 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.13 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.14 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.16 **Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.17 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

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

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

7.20 **Dispute Resolution.**

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for

a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

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

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

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

7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

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

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

7.24 **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
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.

**7.25 Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

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

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

**7.28 Order of Precedence.** The Contract includes, without limitation, the Offer submitted, the Contract award, , and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

7.28.1 this document

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

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

SIEMENS POSTAL, PARCEL, & AIRPORT  
LOGISTICS, LLC


By:   
Signature

Name: Terry Vaughan  
Printed Name

Title: VP customer service

Date: 3/22/19

CITY OF AUSTIN

By:   
Signature

Name: Marian Moore  
Printed Name

Title: Procurement Specialist IV

Date: 3/27/19

## List of Exhibits

Exhibit A	Pricing Agreement
Exhibit B	Non Discrimination Certification, Section 0800
Exhibit C	Non-Suspension or Debarment Certification



**CITY OF AUSTIN**  
**SIEMENS BAGGAGE HANDLING SYSTEM (BHS) PARTS**  
**MA 8100 GS190000002**  
**EXHIBIT A - PRICE SHEET**

**Special Instructions:** The total quoted price represents all fees the Contractor shall charge the City. The ABIA is not responsible for any cost not included in this quote. NOTE: NO MINIMUM PURCHASE REQUIRED. Parts pricing shall be FOB Destination, freight prepaid and allowed.

**Contractor must be able to provide services and parts listed below. These prices shall be based on the Price List(s). Revisions to Specified Items may only be adjusted using the Economic Price Adjustment - Specified Items.**

**SECTION 1 - Siemens Specified Items (Parts)**

Item	Description	Siemens Part #	Estimated Annual Quantity	Price Each	Total Extended Price
1.1	Mechanism, Rotary Operating	#3LD9224-3D	10	\$ 6.30	\$ 63.00
1.2	Paddle Assembly 01 HSD	#6603-20-01	10	\$ 3,581.58	\$ 35,815.80
1.3	Pulley Motorized, w/a-Belt Drive for 48v, 3 Phase, 60Hz	#AL00016791	5	\$ 6,410.56	\$ 32,052.80
1.4	Positive Tracking Queue Belt 111-3/4 LG	#AL00020889	10	\$ 513.16	\$ 5,131.60
1.5	Motor, AC 184TC, 3 PH, 1725 RPM	#AL200-0447	5	\$ 2,709.18	\$ 13,545.90
1.6	Clutch/Brake - Vertical Sorter, CB-10-1-1/2"	#AL206-9904	10	\$ 4,818.04	\$ 48,180.40
1.7	Roller, Transition - Return Roller GS 1 DIA X 29-3/4 LG	#AL257-4129	50	\$ 13.14	\$ 657.00
1.8	Roller, - Idle, Merge Belt Tensioner - SE 15/18, R-15/18	#AL257-9068	10	\$ 103.08	\$ 1,030.80
1.9	Sprocket - Tie Rod Cam, HSD	#AL6603-20-25	10	\$ 563.02	\$ 5,630.20
1.10	Pulley, Conveyor - Idler Assembly, HSD	#AL6603-20-38	5	\$ 563.02	\$ 2,815.10
1.11	Module, Power Supply, 120 VAC, 1.3, 24 VDC	#AL6EP1331-1SH03	5	\$ 174.47	\$ 872.35
1.12	Wheel, Guide - Slope Bracket Support, 4", Urethane	#AL7360-1	800	\$ 15.17	\$ 12,136.00
1.13	Pulley 6 Dia TF Dyn Balanced 39 BG	#AL9473-15-39	5	\$ 287.37	\$ 1,436.85
1.14	Pulley Drive 6 Dia FF Dynamically Bal	#AL9473-16-39	5	\$ 291.48	\$ 1,457.40
1.15	5 DEG Tapered Roller 8-5/16 LG	#ALJ1-9100-113-5	5	\$ 1,026.32	\$ 5,131.60
1.16	Lower Conveyor Frame	#ALJ1-9400-135-05	5	\$ 5,131.60	\$ 25,658.00
1.17	Upper Conveyor Frame	#ALJ1-9400-135-06	5	\$ 5,131.60	\$ 25,658.00
1.18	Pulley, Conveyor - Pulley Assembly, VS	#ALJ1-9400-135-07	5	\$ 626.84	\$ 3,134.20
1.19	PUL Dyna-Sync H150X16TEETH	#DX234-0516XX	5	\$ 36.95	\$ 184.75
1.20	Shaft - Main Drive, HSD	#DX6603-20-17	10	\$ 175.50	\$ 1,755.00
1.21	Solenoid-Coil, HSD, For RH Clutch Brake/Paddle	#DXAL00006320	5	\$ 837.89	\$ 4,189.45

1.22	Solenoid-Coil, HSD, For LH Clutch Brake/Paddle	#DXAL00006321	5	\$	933.95	\$	4,669.75
1.23	Assembly, Paddle Chain, Left	#DXAL00006464	20	\$	488.69	\$	9,773.80
1.24	Assembly, Paddle Chain, Right	#DXAL00006465	20	\$	488.69	\$	9,773.80
1.25	Complete Verticle Diverter Assembly	#J1-9400-135	2	\$	53,368.68	\$	106,737.36
1.26	Sorter, Verticle, Conveyor Frame, Upper	#J1-9400-135-06	2	\$	5,131.60	\$	10,263.20
1.27	Bar RND HRS 314 DIA	#J1-9400-135-15-A	5	\$	240.16	\$	1,200.80
1.28	Sprocket - Timing Gear, Crank Assembly	#J1-9400-135-19	5	\$	846.12	\$	4,230.60
1.29	Roller, Steel, Assembly, Tail, Crowned, V-Groove	#MTALH-0000-040	5	\$	428.08	\$	2,140.40
1.30	Assembly, Diverter Paddle-Drive, Left HSD 6650	#MTALH-0014-100	10	\$	5,596.20	\$	55,962.00
1.31	Assembly, Diverter Paddle-Drive, Right HSD 6560	#MTALH-0014-200	10	\$	5,596.20	\$	55,962.00
1.32	Assembly, Diverter Paddle-Driver, Left HSD 6650	#MTALH-0014-300	10	\$	6,165.77	\$	61,657.70
1.33	Assembly, Diverter Padle-Driver, Right HSD 6650	#MTALH-0014-400	10	\$	6,165.77	\$	61,657.70
1.34	Pulley, Conveyor-Idler, Flanged, Universal, HSD	#P2B 6603-30-38	5	\$	275.00	\$	1,375.00
<b>TOTAL FOR SECTION 1</b>						\$	611,940.31

## SECTION 2 - ON-SITE TRAINING

Item	Training Class	Training Hours	Estimated Annual No. of Trainings	Price Each	Total Extended Price
2.1	Siemens Verticle Sorter Training (three eight-hour sessions of approximately 8 students each)	24	1	\$ 10,794.00	\$ 10,794.00
2.2	Siemens Diverter Paddle Training (three five-hour sessions of approximately eight students each)	15	1	\$ 9,707.00	\$ 9,707.00
<b>TOTAL FOR SECTION 2</b>					\$ 20,501.00

**TOTAL FOR ALL SECTIONS** \$ 632,441.31

## SECTION 3 - NON-SPECIFIED ITEMS

The Contractor shall also provide baggage handling system parts that are listed above. The prices for these Non-Specified Items shall be based on the Price List(s) and require a percentage discount.

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

Bidder shall provide the latest effective date of the identified price list, name and number of the identified price list, and the percentage discount(s) and to the identified price list(s).

Item	ITEM DESCRIPTION		
3.1	Percent Discount based on the manufacturer's suggested price for any additional items not identified in the sections above.	\$25,000.00	_____% Discount Price List Name / Number _____ Price List Date _____
DELIVERY SHALL BE MADE based on a mutually agreed upon schedule.			
DELIVERY TERMS: <b>FOB Destination, Freight Pre-paid and Allowed</b>			
DELIVERY METHOD: _____			



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

**City of Austin, Texas**  
**Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

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

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

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

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

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

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



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

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

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

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

**Sanctions:**

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

**Term:**

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_


CONTRACTOR Siemens Postal, Parcel & Airport  
Authorized Logistics LLC  
Signature [Signature] Chun P. A.  
Title UP customer service C. S. C. H. O. - SR.  
CONTRACTOR  
3/22/19

City of Austin, Texas  
Exhibit C  
NON-SUSPENSION OR DEBARMENT CERTIFICATION

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name: Siemens Postal, Parcel & Airport Logistics LLC

Signature of Officer or  
Authorized  
Representative:  Date: 3/22/19  
C. SECCHIO, JR.

Printed Name: Jerry Vaughan C. SECCHIO, JR.

Title VP customer service CONTROLLER



## City of Austin Purchasing Office

### Sole Source Certificate of Exemption

DATE: 10/12/2018 DEPT: Aviation  
TO: Purchasing Officer or Designee FROM: Mike Robinson  
PURCHASING POC: Marian Moore PHONE: (512) 530-7504

Chapter 252 of the Local Government Code requires that municipalities comply with certain competitive solicitation procedures before entering into a contract requiring an expenditure greater than \$50,000, unless the expenditure falls within an exemption listed in Section 252.022 or other applicable law.

Refer to Local Government Code 252.022 for a complete list of exemptions:

[Link to Local Government Code](#)

This Certificate of Exemption must be complete, fully executed, and filed with the City Purchasing Office.

The City has deemed this procurement to be exempt from the competitive solicitation requirements of LGC Chapter 252 based on the following facts:

1. The undersigned is authorized and certifies that the following exemption is applicable to this procurement.

Please check the criteria listed below that applies to this sole source request:

- ☒ Items that are available from only one source because of patents, copyrights, secret process, or natural monopolies.
- ☐ Films, manuscripts or books that are available from only one source.
- ☐ Gas, water and other utilities that are available from only one source.
- ☐ Captive replacement parts or components for equipment that are only available from one source.
- ☐ Books, papers and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials.
- ☐ Management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits.



2. Describe this procurement including the following information as applicable:

- What it is for and why it is needed?
- What is the municipal purpose that this procurement addresses or furthers?
- Why is the procurement a sole source?
- Has this procurement or a similar procurement been competitively solicited in the past?
- Why is the vendor the only viable solution?
- Are there any other alternative solutions? If so, why are those alternatives unacceptable?
- Is there a concern regarding warranty, compatibility, and/or routine safety?
- Are there territorial or geographic restrictions for the product distribution and sale?
- Are there other resellers, distributors, or dealers in the market?
- What other suppliers or products/services were considered?
- If the product is designed to be compatible with existing equipment/item/system, describe the age, value and useful life remaining of the current equipment/item/system. What is the estimated cost of buying new equipment/item/system? What is value of buying the addition versus buying all new?
- Is there a way to retrofit another brand? What is this estimated associated cost?
- What specialized training or certifications are necessary to maintain or repair the equipment/item/system? Is it specific to the proposed vendor?
- **Prices were determined to be reasonable based on the following (select all that apply):**

☒ Prices are the same or similar to current City contract. *At a minimum, note the City of Austin contract number and title.*

*Notes:* Prices are comparable (minus price fluctuations due to cost increases/decreases of material components) to previous City (Aviation) master agreements and RQs.

☐ Prices are the same or similar to current contract with another government. *At a minimum, note the contract number, title and government that created the contract.*

*Notes:*

☐ Prices are on a current and publicly available list price, for the same or similar products, available to all government and commercial customers. *At a minimum, note the list price title, source of the list price (catalog and catalog publish date or web address and download date).*

*Notes:*

☐ Prices are established by law or regulation. *At a minimum, note the legal or regulatory reference that established the prices.*

*Notes:*

☐ Other means of determining Price Reasonableness. *Describe any other source that was used to establish Price Reasonableness.*

*Notes:*

\* The questions in the form are designed to justify why this purchase should be exempt from a competitive procurement process. Failure to provide adequate documentation to substantiate the request may lead to the request being rejected.



#### Department Description of Purchase:

The Austin-Bergstrom International Airport's multi-million dollar baggage handling system is critical to airport operations. In order to maximize the uptime of the system to ensure availability, Original Equipment Manufacturer (OEM) replacement parts designated as critical are kept on hand so that maintenance staff is able to restore the system to full functionality after a component failure. Failure to have these replacement parts on-hand and immediately available to repair the system will have a negative impact on airline operations and service to the traveling public.

This system incorporates eight (8) Siemens Vertical Sorter Conveyor Sections and thirty four (34) Diverter Paddles that are used during passenger luggage screening operations. These conveyor sections are the critical decision points of our system for cleared and alarmed bags. These vertical sorters and diverter paddles are not interchangeable with other manufacturers' parts and require only Siemens replacement parts for repairs. Due to the capital investment it would require, it is also cost prohibitive to replace the entire conveyor sections to install a different manufacturer's paddles or sorters because we would also have to replace several conveyors sections up and down stream of these components. This will also result in the requirement to have our system re-certified thru the TSA to ensure that we still meet the current PDGS standards. Without this purchase we will not be able to effectively and efficiently maintain our baggage conveying system and meet the department goals to ensure our facility systems are functioning and available at all times.

3. Forward the completed and signed Certificate of Exemption to the Purchasing Office along with the following documentation:

- ☒ Scope of Work or Statement of Work or Vendor Proposal
- ☐ Vendor's Quote
- ☒ Project timeline with associated tasks, schedule of deliverables or milestones, and proposed payment schedule
- ☒ Vendor's or Manufacturer's (if vendor is a sole authorized distributor) sole source letter: less than 6 months old, signed by an authorized representative, and on company letterhead, should clearly state they are the sole provider and explain why

4. Based on the above facts and supporting documentation, the City of Austin has deemed this procurement to be exempt from competitive procurement requirements pursuant to Texas Local Government Code section 252.022(7) and will contract with:

(Vendor Name): Siemens Postal, Parcel, & Airport Logistics, LLC for

(Description of Procurement): Baggage Handling Parts

5. Check the contract type (one-time or multi-term) and fill in the dollar amount and term as applicable:

☐ This is a one-time request for \$ \_\_\_\_\_

☒ This is a multi-term contract request for 36 (# months for base term) in the amount of \$ 378,300.00 with 2 (# of renewal options) for \$ 145,860.75 each for a total contract amount of \$ 663,075.75.

Recommended  
Certification

Neil C. H. 10/06/18  
Originator Date

Approved  
Certification

[Signature] 10/24/18  
Department Director or designee Date

[Signature] 10/24/18  
Assistant City Manager / General Manager Date  
(procurements requiring Council approval)

Purchasing Office  
Review

[Signature] 11/30/18  
Authorized Purchasing Office Staff Date

Purchasing Office  
Management Review

\_\_\_\_\_  
Purchasing Officer or designee Date  
(procurements requiring Council approval)

## GOAL DETERMINATION REQUEST FORM

<b>Buyer Name/Phone</b>	Marian Moore / 512-974-2062	<b>PM Name/Phone</b>	Tina Gamez / 512-530-6717
<b>Sponsor/User Dept.</b>	Aviation	<b>Sponsor Name/Phone</b>	Tina Gamez / 512-530-6717
<b>Solicitation No</b>	Sole Source	<b>Project Name</b>	Siemens BHS Parts and Training
<b>Contract Amount</b>	\$665,000	<b>Ad Date (if applicable)</b>	N/A
<b>Procurement Type</b>			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input type="checkbox"/> IFB – IDIQ <input type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Critical Business Need <input checked="" type="checkbox"/> Sole Source* <input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – JOC <input type="checkbox"/> PS – Project Specific <input type="checkbox"/> Commodities/Goods <input type="checkbox"/> Interlocal Agreement <input type="checkbox"/> AD – Design Build <input type="checkbox"/> IFB – Construction <input type="checkbox"/> PS – Rotation List <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Ratification			
<b>Provide Project Description**</b>			
The contract is for the purchase of original equipment manufacturer parts and maintenance training for the baggage handling system at ABIA. The parts in need are manufactured and distributed by Siemens Postal, Parcel, & Airport Logistics, LLC			
<b>Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.</b>			
New contract. Previously needs were met with spot purchases.			
<b>List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)</b>			
1102255 - Parts and Accessories, Conveyor Belt - 70% 9247835 - Training, On-Site, Instructor Led - 30%			
Marian Moore		12/5/2018	
<b>Buyer Confirmation</b>		<b>Date</b>	

\* Sole Source must include Certificate of Exemption

\*\*Project Description not required for Sole Source

<b>FOR SMBR USE ONLY</b>			
<b>Date Received</b>	12/5/2018	<b>Date Assigned to BDC</b>	12/5/2018
<b>In accordance with Chapter 2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:</b>			
<input type="checkbox"/> Goals	% MBE	% WBE	
<input type="checkbox"/> Subgoals	% African American	% Hispanic	
	% Asian/Native American	% WBE	
<input type="checkbox"/> Exempt from MBE/WBE Procurement Program		<input checked="" type="checkbox"/> No Goals	

**GOAL DETERMINATION REQUEST FORM**

**This determination is based upon the following:**

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

*If Other was selected, provide reasoning:*

**MBE/WBE/DBE Availability**

N/A

**Subcontracting Opportunities Identified**

N/A

Tracy Burkhalter

**SMBR Staff**

**Signature/ Date**

*Tracy Burkhalter*

*12-5-18*

**SMBR Director or Designee**

**Date**

*12-6-18*

**Returned to/ Date:**