

**CONTRACT BETWEEN THE CITY OF AUSTIN (“City”)
AND
OCCUPATIONAL HEALTH CENTERS OF THE SOUTHWEST PA
dba CONCENTRA MEDICAL CENTERS (“Contractor”)
for
Medical and Evaluation Health Program
MA 1500 PA200000031**

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

This Contract is between Occupational Health Centers of the Southwest PA dba Concentra Medical Centers having offices at 10001 South IH-35, Suite 300, Austin, TX 78747 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City (“Effective Date”).

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number RFQS 1500 EAD4003.

1.1 This Contract is composed of the following documents:

- 1.1.1 This Contract
- 1.1.2 The City’s Solicitation, Request for Qualifications (RFQS), 1500 EAD4003 including all documents incorporated by reference
- 1.1.3 Concentra Medical Centers Offer, dated September 19, 2019, including subsequent clarifications

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

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

1.3 Term of Contract.

- 1.3.1 **Term of Contract.** The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of thirty-six (36) months.

The Contract may be extended beyond the initial term for up to two (2) additional twelve (12) month upon mutual agreement of both parties.

- 1.3.1.1 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 adjustment otherwise allowed under the Contract.
- 1.3.1.2 Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such

a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under the Contract (not to exceed 120 calendar days unless mutually agreed to in writing).

1.3.1.3 Prices are firm for the first twenty-four (24) months.

1.4 **Compensation.** The Contractor shall be paid a total Not-to-Exceed amount of \$75,000 for the initial Contract term and \$25,000 for each extension option, for a total contract amount Not-to-Exceed \$125,000. Payment shall be made upon successful completion of services as outlined in each individual Delivery Order.

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

1.5.1 Exhibit A – Price Sheet

1.5.2 Exhibit B – Negotiated Terms and Conditions

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

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

**OCCUPATIONAL HEALTH CENTERS
OF THE SOUTHWEST PA
dba CONCENTRA MEDICAL CENTERS**

Robert G. Hassett, DO, MPH
Printed Name of Authorized Person

DocuSigned by:

R.G. Hassett, D.O., M.P.H.

Signature

President, Treasurer and Corporate Secretary

Title:

2/3/2020

Date:

CITY OF AUSTIN

Erin D'Vincent
Printed Name of Authorized Person



Signature

Procurement Supervisor

Title:

2-3-2020

Date:

Exhibit A Price Sheet

Services	Standard market price	Rate for Contract
Asbestos Medical Surveillance Physical	\$ 138.50	\$ 80.00
Medical Opinion Letter with Review	\$ 10.00	\$ 5.00
Asbestos Medical Questionnaire	\$ 44.50	\$ 25.00
Chest X-Ray-1 View	\$ 93.50	\$ 74.00
Auditory Exam Initial/Periodic/Exit		
Auditory Exam- Audiogram	\$ 59.50	\$ 32.00
Cadmium-Random Urine 672SB	\$ 162.50	\$ 150.00
Chemistry 23 Screen 307818	\$ 141.50	\$ 120.00
Chromium-Whole Blood 6085	\$ 155.00	\$ 130.00
Complete Blood Count (CBC) w/DIFF 6399SB	\$ 79.00	\$ 50.00
Consultation Services MD/DO per@ providers clinic	\$ 300.00	\$ 300.00
Consultation Services NP per hr @ providers Clinic	\$ 147.50	\$ 147.50
DOT Physical Initial/Periodic		
DOT Physical	\$ 108.00	\$ 85.00
Functional Capacity Exam (per hour rate)	\$815.00 flat rate	\$815.00 flat rate
Hemoccult (In Center)	\$ 101.00	\$ 100.00
Hep A (series of 2)	\$ 136.50	\$ 136.50
Hep B Surface Antigen 498SB	\$ 108.00	\$ 80.00
Hepatitis B Vaccine-2st injection	\$ 131.00	\$ 100.00
Hepatitis B Vaccine-3rd Injection	\$ 131.00	\$ 100.00
Hepatitis B Vaccine-1st injection	\$ 131.00	\$ 100.00
Hepatitis C Antibody 8472SB	\$ 145.00	\$ 120.00
HHW-Initial/Periodic/ Exit		
HHW- Arsenic- Randon Urine 270	\$ 146.50	\$ 36.00
HHW-Audiogram	\$ 59.50	\$ 50.00
HHW-Cadmium-Random Urine 672SB	\$ 162.50	\$ 105.00
HHW-Xray Chest 1 View	\$ 93.50	\$ 74.00
HHW-EKG Resting	\$ 102.50	\$ 60.00
HHW-Pulmonary Function Test	\$ 69.00	\$ 50.00
HHW-Tetanus Toxoid	\$ 76.50	\$ 50.00
HHW-Lead (Pb) Whole Blood 599SBX	\$ 85.00	\$ 65.00
HHW-Zinc Protoporphyrin 948SB	\$ 84.00	\$ 55.00
HHW-U/A Dipstick in center	\$ 51.00	\$ 40.00
HHW-Mercury (HG)-Random Urine 637	\$ 166.00	\$ 90.00
HHW- Chemistry 23 Screen 307818	\$ 141.50	\$ 75.00
HHW- Physical Level 2	\$ 90.50	\$ 65.00
HHW-Polychlorinated Biphenyls (PCB) 93277	\$ 238.50	\$ 100.00
Human Performance Evaluation (Creation of)	400.00 + 150.00 each additional Hr.	400.00 + 150.00 Each Additioanl Hr
Human Performance Evaluation Concentra Level 4	\$ 148.50	\$ 75.00
Narrative	\$ 81.50	\$ 20.00
Physical-Periodic	\$ 90.50	\$ 55.00

Exhibit A Price Sheet

Services	Standard market price	Rate for Contract
Physical pre-placement	\$ 90.50	\$ 55.00
Polychlorinated Biphenyls (PCB) 26503SB	\$ 209.50	\$ 130.00
Regulated UDS pre-placement	\$ 76.50	\$ 55.00
Respirator Physical Initial/Periodic		
Pulmonary Function Test	\$ 69.00	\$ 50.00
OSHA Questionnaire	\$ 162.50	\$ 60.00
Respirator Fit Test (Qualitative)	\$ 141.50	\$ 70.00
Respirator Physical	\$ 155.00	\$ 65.00
U/A Manual Microscopic 8563	\$ 79.00	\$ 50.00
Update Existing Human Performance	\$175.00 per hour	175.00 per hour
Whisper Test	\$ -	\$ 5.00
X-Ray B read/Interpretation	\$ 96.00	\$ 80.00
X-Ray Chest 1- View	\$ 93.50	\$ 75.00
X-Ray Chest 2-View	\$ 116.00	\$ 95.00
X-Ray Chest 3-View	\$ 127.00	\$ 100.00



**CITY OF AUSTIN
PURCHASING OFFICE
EXCEPTIONS**

Solicitation Number: RFQS 1500 EAD4003

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

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

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

Indicate:

☒ **Solicitation Instructions**

Page Number 19

Section Number 19

Section Description *Letters of Intent
Alternative*

rejecting since an MBE/WBE Compliance Plan is not required

Letters of Intent: When a MBE/WBE Compliance Plan is required, the successful Offeror must submit to the Purchasing Officer the Letters of Intent to subcontract required by the Compliance Plan within three ~~(1)~~ (3) business days after notification. Failure to submit the required letters will be grounds for rejection of the Offer.

Indicate:

☒ **0300 Standard Purchase Terms & Conditions**
0400 Supplemental Purchase Provisions
0500 Scope of Work
0635 Performance Measures Form

Accept Concentra's revision

Page Number 20

Section Number 3

Section Description *Contractor to Package Deliverables
Alternative*

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.~~ Reserved.

Indicate:

- X 0300 Standard Purchase Terms & Conditions
0400 Supplemental Purchase Provisions
0500 Scope of Work
0635 Performance Measures Form

Accept Concentra's additions

Page Number 5

Section Number 17(B)

Section Description *Audits and Records*

Alternative Language:

- iv. Custodian. Contractor shall serve as the custodian of medical records created at the clinic during the term of this Agreement. Contractor, as custodian of records shall abide by all local, state, and federal requirements for such record retention during and after the term of this Agreement. Contractor shall also abide by all applicable laws related to Contractor and the medical service record retention. City acknowledges that Contractor will provide copies of medical records to any third-party requestor (with the appropriate executed release from the employee/patient, court order, or business affidavit, as applicable).
- v. Access. City understands and acknowledges that the City is not entitled to access any patient medical records except to the extent allowed by law. Contractor is a "covered entity" as enumerated in 45 CFR §160.103. As a covered entity, Contractor may only disclose protected health information as authorized by and to the extent allowed by law.
- vi. Retention and Destruction. Upon the termination of this Agreement for any reason, Contractor shall maintain all records created against the statutory and regulatory requirements. Should City request records be maintained by Contractor beyond any state, local or federal rule due to an ongoing audit or legal matter, then City shall be invoiced for such retention for as long as such records are retained until written notice from City to destroy such retained records.

This Section 17.C shall survive the termination of this Agreement.

Indicate:

- X 0300 Standard Purchase Terms & Conditions
0400 Supplemental Purchase Provisions
0500 Scope of Work
0635 Performance Measures Form

Accept Concentra's edits

Page Number 1

Section Number 9

Section Description *Place and Condition of Work*

Alternative Language:

The ~~City shall provide the Contractor access to the sites where the Contractor~~ is to perform the services at its local business locations 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

Indicate:

- X 0300 Standard Purchase Terms & Conditions
0400 Supplemental Purchase Provisions
0500 Scope of Work
0635 Performance Measures Form

Page Number 22

Section Number 13(D)

Section Description *Payment*

Alternative Language:

City rejects Concentra's redlines and is unable to accept

~~A. 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:~~

- ~~iv. delivery of defective or non-conforming Deliverables by the Contractor;~~
- ~~v. 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;~~
- ~~vi. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;~~
- ~~vii. 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;~~
- ~~viii. 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;~~
- ~~ix. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or failure of the Contractor to comply with any material provision of the Contract Documents.~~

Indicate:

- X 0300 Standard Purchase Terms & Conditions
0400 Supplemental Purchase Provisions
0500 Scope of Work
0635 Performance Measures Form

Page Number 24

Section Number 20(A)(C)

Section Description *Warranty-Price*

Alternative Language:

City rejects Concentra's redlines and is unwilling to accept

~~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.~~

~~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.~~

Indicate:

- X 0300 Standard Purchase Terms & Conditions
0400 Supplemental Purchase Provisions
0500 Scope of Work
0635 Performance Measures Form

Page Number 26

Section Number 28

Section Description *Termination Without Cause*

Alternative Language:

City will accept with 180 days notice

~~The City~~ Either party 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 to the other party. 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.

Indicate:

- 0300 Standard Purchase Terms & Conditions**
X 0400 Supplemental Purchase Provisions
0500 Scope of Work
0635 Performance Measures Form

Page Number 35
Section Number 3
Section Description *Term of the Contract*
Alternative Language:

City will accept Concentra's revision

The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of thirty-six (36) months. The Contract may be extended beyond the initial term for up to two (2) additional twelve (12) month periods ~~at the City's sole option~~ upon mutual agreement of the parties. 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.

Indicate:

- 0300 Standard Purchase Terms & Conditions**
X 0400 Supplemental Purchase Provisions
0500 Scope of Work
0635 Performance Measures Form

Page Number 36
Section Number 3(D)
Section Description *Term of the Contract*
Alternative Language:

City will accept Concentra's revision

Prices are firm and fixed for the ~~first twelve~~ twenty-four (24) months. Thereafter, price changes are subject to the ~~Economic Price Adjustment~~ an automatic increase of two (2%) perfect annually thereafter ~~provisions of this Contract.~~

Indicate:

- 0300 Standard Purchase Terms & Conditions**
X 0400 Supplemental Purchase Provisions
0500 Scope of Work
0635 Performance Measures Form

Page Number 37
Section Number 7
Section Description *Economic Price Adjustment*
Alternative Language:

City rejects removing "prior to the yearly anniversary date of the Contract." City accepts removing "adjustments may only be considered at that time unless otherwise specified herein."

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.

Indicate:

- 0300 Standard Purchase Terms & Conditions
 0400 Supplemental Purchase Provisions
 X 0500 Scope of Work
 0635 Performance Measures Form

Page Number 41

Section Number 4.0

Section Description *Scope of Work*

Alternative Language:

City will accept Concentra's revision

All medical services ~~shall~~may be provided by an RN, PA, or Physician who is board certified by the American College of Occupational and Environmental Medicine ("ACOEM"). All employee examinations shall be conducted at a medical facility within the City Corporate Limits. A mobile test facility is not acceptable.

Indicate:

- 0300 Standard Purchase Terms & Conditions
 0400 Supplemental Purchase Provisions
 X 0500 Scope of Work
 0635 Performance Measures Form

Page Number 41

Section Number 4.1

Section Description *MHEP Services*

Alternative Language:

City will accept Concentra's revision on APC

Physical examination by a Medical Doctor ("MD") or Advanced Practice Clinician ("APC") licensed to practice in the State of Texas;

Audiometric Testing to include "Whisper Test" (only provided in DOT physical);

Indicate:

- 0300 Standard Purchase Terms & Conditions
 0400 Supplemental Purchase Provisions
 X 0500 Scope of Work
 0635 Performance Measures Form

City would like to know if these services can be provided as standalone and not in a DOT physical

Page Number 41

Section Number 4.1.3

Section Description *Untitled*

Alternative Language:

The Contractor may be required to perform an FCE, JTA, and JDA and fill out required forms as specified herein based on the employee participants' job functions. The Contractor shall ~~perform~~ schedule these within 24 to 48 hours after initial request from the Contract Manager.

Indicate:

- 0300 Standard Purchase Terms & Conditions
 0400 Supplemental Purchase Provisions
 X 0500 Scope of Work
 0635 Performance Measures Form

City rejects and proposes the following language. The Contractor shall perform these within 72 hours after initial request from the Contract Manager. If the Contractor will be unable to perform the services within 72 hours after the initial request, the Contractor shall immediately notify the City and get approval from the City.

Page Number 44

Section Number 4.2.2

Section Description *Testing*

Alternative Language:

Respiratory Fit Assessment – All respiratory fit test assessment records submitted by the Contractor to the City shall contain results of all required qualitative and quantitative (at designated locations) protocols used as required by OSHA regulations.

City will accept Concentra's revision

Indicate:

- 0300 Standard Purchase Terms & Conditions
- 0400 Supplemental Purchase Provisions
- X 0500 Scope of Work
- 0635 Performance Measures Form

Page Number 44

Section Number 4.2.3

Section Description *Required Documentation*

Alternative Language:

Submittal to employees — ~~The Contractor shall mail exam results to the City employee's personal mailing address unless the employee instructs Contractor otherwise. The Contractor shall include on each invoice the date the exam results were mailed to each employee during the month.~~ The employee has the option to arrange a consultation with the Contractor for further explanation of exam results. The Contractor shall advise the employee if follow-up with a personal physician is recommended.

Indicate:

- 0300 Standard Purchase Terms & Conditions
- 0400 Supplemental Purchase Provisions
- X 0500 Scope of Work
- 0635 Performance Measures Form

Page Number 45

Section Number 6.1

Section Description *Monthly Reports*

Alternative Language:

City will accept the following revision: The Contractor shall provide exam results that are immediately available to the the City employee at the time of checkout. Blood work or other tests without immediate results will be mailed the City employee's personal mailing address unless the employee instructs the Contractor otherwise.

The Contractor shall email a list of all services rendered during each month to the City ~~by the 10th business day of the following month.~~ The list shall contain the dates of service, the names of the employees and applicants, and the types of services provided.

City will accept Concentra's revision, however, Concentra must adhere to Section 0400 Supplemental Purchase Provisions Item 4 regarding invoices.

Medical and Evaluation Health Program

Solicitation No. RFQS 1500 EAD4033



PRESENTED TO
City of Austin

DUE:
September 19, 2019
2:00 PM

PRESENTED BY
Concentra

Lori Morris, MBA
Senior Key Account Manager
10001 S IH 35 Frontage Road, Suite 300
Austin, TX 78744
Mobile: 210.452.7526
E-mail: lori_morris@concentra.com

September 19, 2019

Erin D'Vincent, Procurement Supervisor
City of Austin
124 W 8th, Room 310
Austin, TX 78701

RE: Medical and Evaluation Health Program, RFQS 1500 EAD4033

Concentra is pleased to present to City of Austin (the City) our proposal to provide Medical and Evaluation Health Program, which adheres to all specifications and includes all relevant attachments.

As the City's incumbent provider for the scope of services and as the nation's leader in occupational healthcare, Concentra is highly qualified and well positioned to continue performing the services the City is seeking. Our national footprint, strong infrastructure, health care expertise, and commitment to service excellence provide tangible benefits for the City – supporting you in your efforts to meet your program objectives. Notably, our 2018 acquisition of U.S. HealthWorks, a national occupational health provider, increased our footprint to more than 530 centers in the United States and brought additional occupational health expertise and clinicians to Concentra.

Concentra draws from a pool of experienced professionals to serve our clients' needs. We assign an initial point of contact during the procurement and contracting phases and designate operational resources to provide ongoing account management and program support. The operations director will monitor contract deliverables and program expectations to help ensure we achieve successful outcomes that effectively meet the program objectives. In addition, the account management team will help ensure the services rendered under the contract remain compliant with all applicable local, state, and federal regulations.

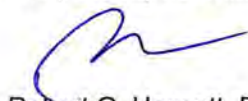
Should you have any questions or concerns regarding our response, please contact *Lori Morris*, MBA, Senior Key Account Manager, via phone: 210.452.7526 or by email: lori_morris@concentra.com.

Concentra affirms that:

- All information contained herein is current, complete, accurate, and remains valid for 180 days following the due date, September 19, 2019
- The City anticipates a contract term of 36 months with the option of (2) 12 month renewals

Concentra values the City's consideration of our response. We are confident that when our experience and capabilities, geographic footprint, and account management strategy are taken into account, Concentra will emerge as the ideal partner for the requested services. We look forward to the opportunity to continue serving as the preferred Medical and Evaluation Health Program partner with City of Austin and its employees.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "R. Hassett".

Robert G. Hassett, DO, MPH
President, Treasurer and Corporate Secretary
Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers



CITY OF AUSTIN, TEXAS
Purchasing Office
REQUEST FOR QUALIFICATION STATEMENTS (RFQS)
OFFER SHEET

SOLICITATION NO: RFQS 1500 EAD4003

COMMODITY/SERVICE DESCRIPTION: Medical and Evaluation Health Program

DATE ISSUED: August 19, 2019

REQUISITION NO.: 19070100617

PRE-RESPONSE CONFERENCE TIME AND DATE: N/A

COMMODITY CODE: 94874

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

RESPONSES DUE PRIOR TO: September 19, 2019, 2:00 PM, Central Time

RESPONSE OPENING TIME AND DATE: September 19, 2019, 3:00 PM, Central Time

Erin D'Vincent
Procurement Supervisor
Phone: (512) 974-3070
E-Mail: erin.dvincent@austintexas.gov

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

Phyllis Benitez
Procurement Specialist III
Phone: (512) 974-3145
E-Mail: Phyllis.Benitez@austintexas.gov

LIVE SOLICITATION OPENING ONLINE: For RFQS's, only the names of respondents will be read aloud

For information on how to attend the Solicitation Closing online, please select this link:

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

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

Address for US Mail (Only)	Address for FedEx, UPS, Hand Delivery or Courier Service
City of Austin	City of Austin, Municipal Building
Purchasing Office-Response Enclosed for Solicitation # RFQS 1500 EAD4003	Purchasing Office-Response Enclosed for Solicitation # RFQS 1500 EAD4003
P.O. Box 1088	124 W 8 th Street, Rm 310
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

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

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

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

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

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

SECTION NO.	TITLE	PAGES
0100	STANDARD PURCHASE DEFINITIONS	5
0200 V2	STANDARD SOLICITATION INSTRUCTIONS, UPDATED JUNE 26, 2018	11
0300	STANDARD PURCHASE TERMS AND CONDITIONS	14
0400	SUPPLEMENTAL PURCHASE PROVISIONS	6
0500	SCOPE OF WORK	6
0600	RESPONSE PREPARATION INSTRUCTIONS & EVALUATION FACTORS	3
0630	EXCEPTIONS	1
0640	BUSINESS ASSOCIATE AGREEMENT	5
0800	NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION–Complete and return	2
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	*
0810 V2	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION, UPDATED JUNE 26, 2018	*
0900	SUBCONTRACTING/SUB-CONSULTING UTILIZATION FORM – Complete & return	1
0905	SUBCONTRACTING/SUB-CONSULTING UTILIZATION PLAN – Complete and return if applicable	3
Attachment A1-A5	DOT EXAM, HOUSEHOLD HAZARDOUS WASTE, LANDFILL, RESPIRATORY EVALUATION, AUDITORY EXAMINATION	5
Attachment B-1	ESSENTIAL JOB FUNCTIONS	3
Attachment C	POST OFFER/PRE-EMPLOYMENT HEALTH QUESTIONNAIRE	2
Attachment D	OSHA INFO SHEET	5

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

http://www.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS

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

The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.

Company Name: Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers

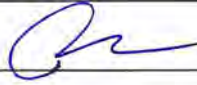
Company Address: 10001 South IH-35, Suite 300

City, State, Zip: Austin, TX 78747

Vendor Registration No. _____

Printed Name of Officer or Authorized Representative: Robert G. Hassett, DO, MPH

Title: President, Treasurer and Corporate Secretary

Signature of Officer or Authorized Representative: 

Date: September 19, 2019

Email Address: mmaccallan@concentra.com

Phone Number: 512.440.0555

*** Qualifications Statement must be submitted with this signed Offer sheet to be considered for award**

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE DEFINITIONS**

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.

1. **Addendum** - a written instrument issued by the Contract Awarding Authority that modifies or clarifies the Solicitation prior to the Due Date. "Addenda" is the plural form of the word.
2. **Alternate Offers** - multiple Offers with substantive variations from the same Offeror in response to a Solicitation.
3. **Appropriate, Appropriated, or Appropriation** - the adoption by the City Council of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.
4. **Authorized City Representative** - a person designated by the City Manager to act for the Contract Awarding Authority.
5. **Best Offer** - the best evaluated Offer in response to a Request for Proposals or Request for Qualification Statements.
6. **Best Offeror** - the Offeror submitting the Best Offer.
7. **Bid** - a complete, properly signed response to an Invitation for Bid, which if accepted, would bind the Bidder to perform the resultant Contract.
8. **Bidder** - a person, firm, or entity that submits a Bid in response to an Invitation for Bid. Any Bidder may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
9. **Bid Guaranty** – a form of security assuring that the bidder (a) will not withdraw the Bid within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Bidder upon execution of a Contract.
10. **Bid Sheet** - a document, signed and dated by a Bidder, containing unit and extended bid prices for all goods and/or services, identified by item numbers and descriptions, for which Bids are being submitted
11. **Business Entity** – any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation.
12. **Central Purchase Order (CT)** - a financial system document issued by the Contract Awarding Authority to encumber funds to pay for the deliverables identified in a Contract.
13. **City** - the City of Austin, a Texas home-rule municipal corporation.
14. **Compliance Plan** - is defined in chapter 2-9 of the City Code.
15. **Construction** - the construction, repair, rehabilitation, alteration, conversion or extension of buildings, parks, utilities, streets or other improvements or alterations to real property.
16. **Contract** - a binding legal agreement between the City and the Offeror. The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

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- A. any exceptions to the Offer accepted in writing by the City
 - B. the Supplemental Purchase Terms and Conditions
 - C. the Standard Purchase Terms and Conditions
 - D. the Offer, exhibits, and attachments; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.
17. **Contract Awarding Authority** - a City department authorized to enter into Contracts on behalf of the City.
18. **Contractor/Consultant** - a person, firm or entity that supplies or provides goods and/or services to the City by Contract.
19. **Controlling Interest** means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stocks or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.
20. **Deliverables** - the goods, products, materials, and/or services to be provided to the City under a Purchase Order, Contract, or Master Agreement.
21. **Delivery Order** - a release against a Master Agreement authorizing delivery of goods and/or performance of services. A financial system document issued by the Department to encumber funds to pay for the deliverables.
22. **Disadvantaged Business Enterprise** - is defined in 49 Code of Federal Regulation Part 26 or other applicable federal regulations.
23. **Due Date** - the date and time specified for receipt of Bids, Proposals, Qualification Statements, Quotations, Responses, Submittals and Compliance Plans.
24. **Goods** - supplies, materials, or equipment.
25. **Highest Responsible Offer** - the highest Offer meeting all requirements of the specifications, terms, and conditions of the Invitation for Bid-Sale or Request for Quotation-Sale.
26. **Highest Responsible Offeror** - the Offeror submitting the "Highest Responsible Offer."
27. **Interested Party** – a person who has a Controlling Interest in a Business Entity with whom the City contracts or who actively participates in facilitating the Contract or negotiating the terms of the Contract, including a broker, intermediary, adviser, or attorney for the Business Entity.
28. **Invitation for Bid (IFB)** - a Solicitation requesting pricing for a specified Good or Service which has been advertised for Bid in a newspaper and/or on the Internet.
29. **Late Offer** - a Bid, Proposal, Quote, Response, or Submittal that is received after the Due Date and time specified in the Solicitation.
30. **Lowest Responsible Offer** - the Offer meeting all requirements of the specifications, terms, and conditions of the Invitation for Bid or Request for Quotation resulting in the lowest cost to the City in a total cost concept or based solely on price, taking into consideration the financial and practical ability of

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the Vendor to perform the Contract, past performance of the Vendor, and compliance with all City ordinances concerning the purchasing process.

31. **Lowest Responsible Offeror** - the Offeror submitting the Lowest Responsible Offer.
32. **Master Agreement** - a term contract that is used when the total quantity required cannot be definitely fixed, but can be stated as an estimate or within maximum and minimum limits with deliveries on demand. A Master Agreement does not create a financial obligation.
33. **Minority-Owned Business** - is defined in chapter 2-9 of the City Code.
34. **Non-Professional Services** - services performed that are not of a professional nature such as lawn care, security, janitorial, etc.
35. **Offer** - a complete signed response to a Solicitation including, but not limited to, an Invitation for Bid, a Request for Proposal, a Request for Qualification Statements, or a Request for Quotation.
36. **Offeror** - a person, firm, or entity that submits an Offer in response to a City Solicitation. Any Offeror may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status. Includes Bidders, Proposers, Quoters, Contractors and Consultants.
37. **Pre-Bid / Proposal / Quote / Response / Submittal Conference** - a conference conducted by the Contract Awarding Authority, held in order to allow Offerors and Vendors to ask questions about the proposed Contract and particularly the Contract specifications.
38. **Professional Services** - services that use skills that are predominantly mental or intellectual, rather than physical or manual such as accounting, architecture, land surveying, law, medicine, optometry, professional engineering, etc.
39. **Proposal** - a complete, properly signed response to a Request for Proposals, which if accepted, would bind the Proposer to perform the resultant Contract.
40. **Proposal Guaranty** - a form of security assuring that the Proposer (a) will not withdraw the Proposal within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Proposer upon execution of a Contract.
41. **Proposer** - a person, firm or entity that submits a Proposal in response to a Request for Proposals. Any Proposer may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
42. **Purchase Order (PO)** - an order placed by a City department for the purchase of Goods and/or Services written on the City's standard Purchase Order form and which, when accepted by the Vendor becomes a Contract. The Purchase Order is the Vendor's authority to deliver and invoice the City for Goods and/or Services specified, and the City's commitment to accept the Goods and/or Services for an agreed upon price.
43. **Purchasing Office** - refers to the Purchasing Office in the Financial and Administrative Services Department of the City.
44. **Quote** - a complete, properly signed response to a Request for Quotation, which if accepted, would bind the Offeror to perform the resultant Contract.

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- 45. **Quoter** - a person, firm or entity that submits a Quote in response to a Request for Quotations. Any Quoter may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
- 46. **Request for Information (RFI)** - a solicitation used to obtain "state of the art" information on goods and/or services for informational purposes only.
- 47. **Request for Interest (RFINT)** - a solicitation used to identify interest in a City requirement.
- 48. **Request for Proposal (RFP)** - a solicitation used to acquire goods and/or services when a clearly defined scope of work or specification is not available.
- 49. **Request for Qualification Statements (RFQS)** - a solicitation used to acquire professional services as defined by the State of Texas Government Code, Chapter 2254.
- 50. **Request for Quotation (RFQ)** - a solicitation used to acquire goods and/or services with a total dollar value less than the State of Texas competitive bidding amount.
- 51. **Resident Bidder** - a person, firm, or entity whose principal place of business is in the State of Texas, including a Contractor whose ultimate parent company or majority owner has its principal place of business in the State of Texas.
- 52. **Response** - a complete signed reply to a Solicitation including, but not limited to a Request for Information and/or a Request for Interest.
- 53. **Response Guaranty** – a form of security assuring that the Offeror (a) will not withdraw the Offer within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Offeror upon execution of a Contract.
- 54. **Responsible** - refers to the financial and practical ability of the Offeror to perform the Contract and takes into consideration resources, expertise, and past performance of the Offeror as well as compliance with all City ordinances concerning the purchasing process.
- 55. **Responsive** - meeting all the requirements of a Solicitation.
- 56. **Services** - include all work or labor performed for the City on an independent Contractor basis other than construction.
- 57. **Solicitation** - as applicable, includes Invitation for Bid, Invitation for Bid - Sale, Request for Proposal, Request for Qualification Statements, Request for Quotation, Request for Quotation – Sale, Request for Information, Request for Interest, or such other request as defined by the City.
- 58. **Subcontractor/Subconsultant** - a person, firm, or entity providing goods and/or services to a prime Contractor / Consultant to be used in the performance of the prime Contractor/Consultant's obligations under a Contract.
- 59. **Sub-Subcontractor/Sub-Subconsultant**- a person, firm or entity providing goods and/or services to a Subcontractor/Subconsultant to be used in the performance of the Subcontractor/Subconsultant's obligations under a Contract.

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- 60. **Unbalanced Offer** - an Offer that is based on prices which are significantly less than cost for some items and significantly more than cost for others.
- 61. **Vendor** - a person, firm, or entity that sells Goods and/or Services.
- 62. **Woman-Owned Business** - is defined in chapter 2-9 of the City Code.

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1. **VENDOR REGISTRATION:** All Vendors, Contractors, Subcontractors, Consultants, and Subconsultants desiring to sell to the City must be registered to do business with the City prior to submitting an Offer to a City solicitation. Prime Contractors/Consultants are responsible for ensuring that their Subcontractors/Subconsultants are registered. Registration can be done through the City's online vendor registration system. [Log onto http://www.austintexas.gov/financeonline/vendor_connection/index.cfm](http://www.austintexas.gov/financeonline/vendor_connection/index.cfm) and follow the directions.
2. **EQUAL OPPORTUNITY:**
 - A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
 - B. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.
3. **MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE (MBE/WBE) PROCUREMENT PROGRAM:**

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. Goals for MBE/WBE participation are stated in each Solicitation and differ from contract to contract based on the type of contract, the availability of MBEs/WBEs to perform the functions of the contract, and other factors. Information on achieving the goals or documenting good faith efforts to achieve the goals are contained in the MBE/WBE Program Package contained in Section 0900 of the Solicitation. When goals are established, Offerors are required to complete and return the MBE/WBE Compliance Plan with their Offer. If no goals are established, Offerors are required to submit the No Goals Utilization Plan. If a Compliance Plan or No Goals Utilization Plan is not submitted prior to the date and time set forth in the Solicitation, the Offer will not be accepted for consideration.
4. **SOLICITATION:**
 - A. **Review of Documents:** Offerors are expected to examine all documents that make up the Solicitation. Offerors shall promptly notify the City of any omission, ambiguity, inconsistency or error that they may discover upon examination of the Solicitation. Offerors must use a complete Solicitation to prepare Offers. The City assumes no responsibility for any errors or misrepresentations that result from the use of incomplete Solicitations.
 - B. **Location of Documents:** Solicitations are issued by the Purchasing Office. The location and phone number for the Purchasing Office are specified in the advertisement and in the Solicitation.
5. **WRITTEN EXPLANATIONS OR CLARIFICATIONS:** Any material information given to one Offeror concerning a Solicitation will be furnished as an Addendum to all Offerors who have been issued a Solicitation. Any explanation, clarification, interpretation or change to the Solicitation made in any other manner is not binding upon the City, and Offerors shall not rely upon such explanation, clarification, interpretation or change. Oral explanations or instructions given before the award of the Contract are not binding. Requests for explanations, clarifications or interpretations may be faxed to the City at (512) 974-2388. The fax must clearly identify the buyer's name and solicitation number.

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6. **PRE-BID / PROPOSAL / RESPONSE CONFERENCE:** If a Pre-Bid/Proposal/Response conference is mandatory, the time, place and mandatory nature of the conference will be specified on the cover page of the Solicitation. If a Pre-Bid/Proposal/Response Conference is mandatory and is not attended by an Offeror, their Offer will be rejected.
7. **PREPARATION OF OFFERS:**
- A. **Alternate Offers:** Alternate Offers will be rejected unless the Solicitation authorizes the submission of Alternates.
 - B. **Bid Preparation Costs:** All costs associated with preparing a Bid in response to a Solicitation shall be borne by the Bidder.
 - C. **Bid / Proposal / Response Guaranty or Bond:** When required by the Solicitation, an Offer must be accompanied by a Bid/Proposal/Response Guaranty or a Bid / Proposal / Response Bond with Power of Attorney attached, issued by a solvent surety authorized under laws of the State of Texas and acceptable to the City.
 - D. **Brand Name or Equal:** If the Solicitation indicates brand name or "equal" products are acceptable, the Offeror may propose an "equal" product but must be prepared to demonstrate those features that render it equal. Final determination of a product as an "equal" remains with the City.
 - E. **Delivery Time:** Delivery time, if stated as a number of days, will be based on calendar days. Time is of the essence in any City purchase. If the indicated date cannot be met or the date is not indicated, the Offeror shall state its best delivery time.
 - F. **Exceptions:** Exceptions that are taken to any portion of the Solicitation may jeopardize acceptance of the Offer.
 - G. **Free on Board (FOB) Point:** The Offeror should quote its lowest and best price, with the goods delivered to the place specified, at the Offeror's expense and risk, and there tender delivery to the City.
 - H. **Payment:** Payment terms shall be net 30 days.
 - I. **Prices:** Offers shall be firm unless otherwise specified. Pricing shall be entered on the Bid/Quote Sheet (if applicable) in ink. Totals shall be entered in the "Total Price" column of the Bid/Quote Sheet. In the event of a discrepancy between unit price and extended price, the unit price shall govern.
 - J. **Proposal Preparation Costs:** All costs directly or indirectly related to preparation of a Response to an RFP or any oral presentation required to supplement and/or clarify a Proposal which may be required by the City shall be the sole responsibility of the Proposer.
 - K. **Proprietary Information:**
 - i. All material submitted to the City becomes public property and is subject to the Texas Public Information Act, Chapter 552, Texas Government Code, upon receipt.
 - ii. If an Offeror does not desire proprietary information in the Offer to be disclosed, each page must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General.
 - iii. Failure to identify proprietary information will result in all unmarked sections being deemed nonproprietary and available upon public request.
 - iv. For Bids submitted in response to an Invitation for Bids (IFB), the City will not consider any requests to keep the contents of a Bid Sheet Proprietary or Confidential.

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- L. **Signature:** The Offeror must sign each document in the Solicitation requiring a signature. Any change made to the Offer must be initialed by the Offeror.
- M. **Taxes:** Purchases of Goods or Services for City use are usually exempt from City, State, and most Federal Taxes. Offers should not include exempted taxes. The successful Offeror should request a Tax Exemption Certificate from the Purchasing Office. Under no circumstances shall the City be liable to pay exempt taxes under any Contract.
- N. **Anti-Lobbying and Procurement:** Article 6, Chapter 2-7, City Code, repealed and replaced effective on June 25, 2018, prohibits lobbying activities or representations by Offerors during the No-Lobbying Period.

1. FINDINGS; PURPOSE.

- (A) The council finds that persons who enter a competitive process for a city contract voluntarily agree to abide by the terms of the competitive process, including the provisions of this article.
- (B) The council finds that it is in the City's interest:
- (i) to provide the most fair, equitable, and competitive process possible for selection among potential vendors in order to acquire the best and most competitive goods and services; and
 - (ii) to further compliance with State law procurement requirements.
- (C) The council intends that:
- (i) each response is considered on the same basis as all others; and
 - (ii) respondents have equal access to information regarding a solicitation, and the same opportunity to present information regarding the solicitation for consideration by the City.

2. APPLICABILITY.

- (A) This article applies to all solicitations except:
- (i) City social service funding;
 - (ii) City cultural arts funding;
 - (iii) federal, state or City block grant funding;
 - (iv) the sale or rental of real property;
 - (v) interlocal contracts or agreements; and
 - (vi) solicitations specifically exempted from this article by council.
- (B) Absent an affirmative determination by the council, the purchasing officer has the discretion to apply this article to any other competitive process.
- (C) City Code Section 1-1-99 (*Offenses; General Penalty*) does not apply to this article.

3. DEFINITIONS.

In this article:

- (A) AGENT means a person authorized by a respondent to act for or in place of the respondent in order to communicate on behalf of that respondent. Each of the following is presumed to be an agent:
- (i) a current full-time or part-time employee, owner, director, officer, member, or manager of a respondent;
 - (ii) a person related within the first degree of consanguinity or affinity to a current full-time or part-time employee, owner, director, officer, member, or manager of a respondent;
 - (iii) a person related within the first degree of consanguinity or affinity to the respondent, if a respondent is an individual person; and
 - (iv) a lobbyist, attorney, or other legal representative of the respondent that has been retained by the respondent with respect to the subject matter of either the solicitation or the respondent's response to the solicitation.

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- (B) AUTHORIZED CONTACT PERSON means a City employee designated in a City solicitation as the point of contact for all purposes for that solicitation.
- (C) CITY EMPLOYEE is defined in Section 2-7-2 (*Definitions*), and further includes an independent contractor hired by the City with respect to the solicitation.
- (D) CITY OFFICIAL is defined in Section 2-7-2 (*Definitions*).
- (E) NO-LOBBYING PERIOD means the period of time beginning at the date and time a solicitation is published and continuing through the earliest of the following:
 - (i) the date the last contract resulting from the solicitation is signed;
 - (ii) 60 days following council authorization of the last contract resulting from the solicitation; or
 - (iii) cancellation of the solicitation by the City
- (F) PURCHASING OFFICER means the City employee authorized to carry out the purchasing and procurement functions and authority of the City.
- (G) RESPONSE means a written offer or submission in reply to a solicitation.
- (H) RESPONDENT means a person or entity that has timely submitted or subsequently timely submits a response to a City solicitation, even if that person subsequently withdraws its response or has been disqualified by the City for any reason. Respondent includes:
 - (i) a subsidiary or parent of a respondent;
 - (ii) a joint enterprise, joint venture, or partnership with an interest in a response and in which a respondent is a member or is otherwise involved, including any partner in such joint enterprise, joint venture, or partnership; and
 - (iii) a subcontractor to a respondent in connection with that respondent's response.
- (I) SOLICITATION means an opportunity to compete to conduct business with the City that requires council approval under City Charter Article VII Section 15 (*Purchase Procedure*), and includes, without limitation:
 - (i) an invitation for bids;
 - (ii) a request for proposals;
 - (iii) a request for qualifications;
 - (iv) a notice of funding availability; and
 - (v) any other competitive solicitation process for which the purchasing officer, in the purchasing officer's sole discretion, affirmatively determines this article should apply in accordance with Section 2-B.

4. RESTRICTION ON LOBBYING.

Subject to the exclusions in Section 5 (*Permitted Communications*), during a no-lobbying period,

- (A) a respondent or an agent shall not communicate directly with a City official or a City employee, or both in order to:
 - (i) provide substantive information about any respondent or response with respect to the solicitation to which the communication relates;
 - (ii) encourage the City to reject one or more of the responses to the solicitation to which the communication relates;
 - (iii) convey a complaint about the solicitation to which the communication relates; or
 - (iv) ask any City official or City employee to favor or oppose, recommend or not recommend, vote for or against, consider or not consider, or take action or refrain from taking action on any vote, decision, or agenda item regarding the solicitation to which the communication relates.
- (B) a City official shall not contact or communicate with a respondent regarding a response or the solicitation to which the no-lobbying period applies;
- (C) a City employee, other than the authorized contact person, shall not contact or communicate with a respondent regarding a response or the solicitation to which the no-lobbying period applies.

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5. PERMITTED COMMUNICATIONS.

The following communications are permitted under this article at any time:

- (A) any communication between a respondent or agent and any authorized contact person, including, without limitation and in accordance with regulation, any complaint concerning the solicitation;
- (B) any communication between a respondent or agent and any person to the extent the communication relates solely to an existing contract between a respondent and the City, even when the scope, products, or services of the current contract are the same or similar to those contained in an active solicitation;
- (C) any communication between a respondent or an agent and a City employee to the extent the communication relates solely to a non-substantive, procedural matter related to a response or solicitation;
- (D) any communication required by or made during the course of a formal protest hearing related to a solicitation;
- (E) any communication between a respondent or an agent and the City's Small & Minority Business Resources Department, that solely relates to compliance with Chapters 2-9A through 2-9D (*Minority-Owned and Women-Owned Business Enterprise Procurement Program*) of the City Code;
- (F) any communication between an attorney representing a respondent and an attorney authorized to represent the City, to the extent the communication is permitted by the Texas Disciplinary Rules of Professional Conduct;
- (G) any communication made by a respondent or an agent to the applicable governing body during the course of a meeting properly noticed and held under Texas Government Code Chapter 551 (*Open Meetings Act*);
- (H) any communication between a respondent or an agent and a City employee whose official responsibility encompasses the setting of minimum insurance requirements for the solicitation to which the communication relates, to the extent the communication relates solely to the insurance requirements established by the City in the solicitation; and
- (I) any contribution or expenditure as defined in Chapter 2-2 (*Campaign Finance*).

6. MODIFICATION OF RESTRICTION.

The purchasing officer may waive, modify, or reduce the requirements in Section 4 (*Restrictions on Lobbying*) in order to allow respondents to communicate with a City employee or a City official other than the authorized contact person when the purchasing officer determines, in writing, that the solicitation must be conducted in an expedited manner, including but not limited to a solicitation conducted for reasons of health or safety under the shortest schedule possible with no extensions. Any such modification authorized by the purchasing officer shall be stated in the solicitation.

7. NOTICE.

- (A) Each solicitation shall include a notice advising respondents and prospective respondents:
 - (i) of the requirements of this article;
 - (ii) that any communication initiated by a City employee or City official, other than the authorized contact person, during the no-lobbying period regarding a response or the solicitation may result in a violation of Section 4(A) if the respondent subsequently lobbies that City employee or City official.
- (B) The purchasing officer, or a City employee designated by the purchasing officer, shall provide weekly written notice, accessible to all City employees and City officials, of each solicitation for which the no-lobbying period is in effect.

8. DISCLOSURE OF VIOLATION.

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A City official or a City employee other than the authorized contact person that becomes aware of a violation of Section 4 (*Restrictions on Lobbying*) shall notify the authorized contact person in writing as soon as practicable.

9. ENFORCEMENT.

- (A) A respondent that has been disqualified pursuant to Section 10(A) (*Disqualification; Contract Voidable*) may appeal such disqualification to a subcommittee that is less than a quorum of the Ethics Review Commission established in Chapter 2-7, Article 2 (*Ethics Review Commission*), whose decision on appeal shall be final and binding. Any appeal must be filed in the manner prescribed by the Ethics Review Commission within 5 calendar days of the notice given by the purchasing officer pursuant to Section 10(B).
- (B) The purchasing officer shall waive a violation of Section 4(A) if the violation was solely the result of communications initiated by a City official or a City employee other than the authorized contact person.
- (C) The purchasing officer has the authority to enforce this article through rules promulgated in accordance with Chapter 1-2 (*Adoption of Rules*), which at a minimum shall include a notice and protest process for respondents disqualified pursuant to Section 10 (*Disqualification; Contract Voidable*), including:
 - (1) written notice of the disqualification imposed pursuant to Section 10 (*Disqualification; Contract Voidable*);
 - (2) written notice of the right to protest the disqualification imposed; and
 - (3) written notice of the right to request an impartial hearing process.

10. DISQUALIFICATION; CONTRACT VOIDABLE.

- (A) If the purchasing officer finds that a respondent has violated Section 2-7-104(1), the respondent is disqualified from participating in the solicitation to which the violation related.
- (B) The purchasing officer shall promptly provide written notice of disqualification to a disqualified respondent.
- (C) If a respondent is disqualified from participating in a solicitation as a result of violating Section 2-7-104(1) and the solicitation is cancelled for any reason, that respondent is also disqualified from submitting a response to any reissue of the same or similar solicitation for the same or similar project. For the purposes of this section, the purchasing officer may determine whether any particular solicitation constitutes a "same or similar solicitation for the same or similar project".
- (D) If a respondent violates Section 104(1) and is awarded a contract resulting from the solicitation to which the violation relates, the City may void that contract.
- (E) Respondents that violate Section 2-7-104(1) three or more times during a five year period may be subject to debarment from participating in any new contracts with the City for a period of up to three years.

8. SUBMISSION OF OFFERS: Offerors are required to submit an executed original and copies of the Offer as specified on the Offer Sheet of the Solicitation.

- A. **Documents required with Offer:** Submit the following documents with the Offer, as applicable, prior to the Due Date (**SEE SECTIONS 0400, 0500 and 0600 IN THE SOLICITATION FOR ADDITIONAL REQUIRED INFORMATION**). Failure to submit the documents may be grounds to reject the Offer:
 - i. Cover Page, Offer Sheet signed by an authorized representative; ii.
 - Section 0600, Bid/Quote Sheet or Offer, as applicable; iii.
 - Section 0605, Local Business Presence Identification, if applicable;
 - iv. Section 0700, Reference Sheet, as applicable ;
 - v. Sections 0835 – Non-Resident Bidder Provisions;

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- vi. 0815, Living Wage and Benefits Contractor Certification, if applicable;
- vii. Section 0900, MBE/WBE Procurement Program Package;
- viii. Bid/Proposal Guaranty, if applicable; and ix.. any other document included in the Solicitation requiring completion or execution by the Offeror.

All other pages in the Solicitation should be retained by the Offeror.

- B. **Mailing:** Offers and Compliance Plans (when required by the Solicitation), must be returned in a sealed envelope or container marked on the outside with the:

**Offeror's Name & Address
Solicitation Number
Due Date and Time**

- i. If a MBE/WBE Compliance Plan is required, it may be submitted with the sealed Offer or in a separate sealed envelope. If the Compliance Plan is included with the Offer, the outside of the envelope must indicate that the Compliance Plan is included. If the Compliance Plan is submitted in a separate envelope, the outside of the envelope must identify the contents as the "Compliance Plan" and must also include the Offeror's name & address, the Solicitation number, and the Due Date and Time. If a Compliance Plan is required but is not submitted prior to the time set forth in the Solicitation, the Offer will not be accepted for consideration.
- ii. When sending an Offer and/or Compliance Plan, use the proper address as shown below:

Address for US Mail (Only)	Address for Fedex, UPS, Hand Delivery or Courier Service
City of Austin	City of Austin, Municipal Building
Purchasing Office-Response Enclosed for Solicitation #	Purchasing Office-Response Enclosed for Solicitation #
P.O. Box 1088	124 W 8 th Street, Rm 310
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

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

- iii. Unless authorized in the Solicitation, email, facsimile, or electronic Offers will not be accepted.
- C. **Addendum:** Receipt of an Addendum should be acknowledged by signing and returning the Addendum with the Offer or under separate cover prior to the Due Date. The Addendum should be returned with the Offeror's name, address, the Solicitation number, and the Due Date and Time. If the elements covered in the addendum directly impact cost and the addendum is not returned before the Due Date and Time, the offer will be disqualified.
- D. **Acceptance of Offers:** Offers must be received and time stamped at the receptionist's desk in the Purchasing Office prior to the Due Date and Time. The time stamp clock on the receptionist's desk in the Purchasing Office is the official time of record and is verified daily with the local time service at (512) 476-7744. It is the sole responsibility of the Offeror to ensure timely delivery of the Offer. The City will not be responsible for failure of service on the part of the U.S. Postal Office, courier companies, or any other form of delivery service chosen by the Offeror.

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- E. **Late Offers:** All Offers received after the Due Date and Time are considered late and will be returned to the Offeror. It is the responsibility of the Offeror to ensure that their Offer arrives at the proper location by the time and date indicated. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Offer arriving on time. Late Offers will be rejected unless the Purchasing Office, at its sole discretion, determines that the City's misdirection or mishandling was the sole or main cause for the Offer's late receipt at the designated location.
- F. **Rejection of Offers:** The City reserves the right to reject any or all Offers and to waive any minor informality in any Offer or solicitation procedure (a minor informality is one that does not affect the competitiveness of the Offer).

9. **MODIFICATION OR WITHDRAWAL OF OFFERS:**

- A. **Modification of Offers:** Offers may be modified in writing at any time prior to the Due Date.
- B. **Withdrawal of Offers:** Offers may be withdrawn in writing, by email, or by facsimile (provided that the facsimile is signed by the Offeror) at any time prior to the Due Date. An Offeror may also withdraw an Offer in person, provided the withdrawal is made prior to the Due Date. A receipt of withdrawal must be signed by the Offeror. Withdrawn Offers may be resubmitted, with or without modifications, up to the Due Date.

10. **OPENING OF BIDS:** The Purchasing Office representative responsible for opening Bids shall confirm the time and announce the Bid opening. The representative shall then personally and publicly open all Bids timely received, reading each Bid aloud. Following the Bid opening, the City will post on the City's website the Bid Sheets from all timely received Bids.

11. **OPENING OF PROPOSALS / QUALIFICATIONS STATEMENTS AND RELEASE OF INFORMATION:** Proposals / Qualifications Statements will be opened in a manner that avoids disclosure of the contents. Following the Opening of Proposals / Qualification Statements, the City will post on the City's website the names of all Offerors submitting Proposals / Qualification Statements. At its sole discretion, the City may release to the public information that is contained in an opened Proposals / Qualifications Statement after City staff review, except as prescribed by State law, including Texas Government Code Chapter 552 and Local Government Code Chapter 252, provided that the City determines that the disclosure will not create a competitive disadvantage for the City.

12. **EVALUATION FACTORS AND AWARD FOR QUOTES AND BIDS:**

- A. **Evaluation:** Offerors may furnish pricing for all or any portion of the Solicitation (unless otherwise specified). However, the City may evaluate and award the Contract for any item or group of items shown on the Solicitation, or any combination deemed most advantageous to the City. Offers that specify an "all or none" award may be considered if a single award is advantageous. An Offer containing prices significantly lower than all other Offeror's prices for an item will present a rebuttable presumption of irresponsibility.
- B. **Award:** Request for Quotations and Invitations for Bids will be awarded to the Lowest Responsible Offeror. Invitation for Bids – Best Value will be awarded to the offeror who provides goods or services at the best value for the City based on factors outlined in Section 0600. Request for Quotations – Sale and Invitation for Bids – Sale will be awarded to the Highest Responsible Offeror.
- C. **Local Business Presence:** A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years, currently employs residents of the City of Austin, Texas, and will use employees that reside in the City of Austin, Texas, to support this Contract. The City defines headquarters as the administrative center where most of the important

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functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

- (1) For Invitations for Bids if the City receives a competitive sealed bid from an offeror who has Local Business Presences and whose bid is within three percent of the lowest bid price received from an offeror who does not have Local Business Presence, the City may enter into a contract with the local vendor.
- (2) For Request for Proposals and Invitation For Bids-Best Value: Points will be awarded through a combination of the Offeror's Local Business Presence and/or the Local Business Presence of their subcontractors per the below evaluation criteria. Evaluation of the Team's Percentage of Local Business Presence will be based on the dollar amount of goods and/or services as reflected in the Offeror's MBE/WBE Compliance Plan or MBE/WBE Utilization Plan. For Local Business Presence to be considered a completed Section 0605 must be returned with the Offer.

LOCAL BUSINESS PRESENCE (Maximum 10 points)

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

- D. **Acceptance of Quote/Bid:** Acceptance of a Quote/Bid for an open market purchase or supply or service Master Agreement will be by a Purchase Order or a Contract as appropriate. Subsequent Delivery Orders may be issued as appropriate. The contents of a Quote/Bid shall become a part of the Purchase Order/Contract. Under no circumstances will the City be responsible for Goods or Services provided without an acceptance signed by or authorized by an Authorized City Representative.

13. EVALUATION FACTORS AND AWARD FOR PROPOSALS AND RESPONSES:

Competitive Selection: This procurement will comply with applicable City of Austin Policy. The successful Proposer will be selected by the City on a rational basis. Evaluation factors outlined in Section 0600 of the Solicitation shall be applied to all eligible, responsive Proposers in comparing proposals and selecting the successful Proposer. Award of a contract may be made without discussion with Proposers after proposals are received. Proposals should, therefore, be submitted on the most favorable terms.

14. RESERVATIONS: The City expressly reserves the right to:

- A. specify approximate quantities in the Solicitation;
- B. extend the Solicitation closing date and time;
- C. waive as an informality, minor deviations from specifications provided they do not affect competition or result in functionally unacceptable Goods or Services;
- D. waive any minor informality in any Offer or Solicitation procedure (a minor informality is one that does not affect the competitiveness of the Offeror);
- E. add additional terms or modify existing terms in the Solicitation;
- F. reject an Offer containing exceptions, additions, qualifications or conditions not called for in the solicitation;
- G. reject an Offer received from an Offeror who is currently debarred or suspended by the City or State;

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- H. reject an Offer received from an Offeror who is currently debarred or suspended by the Federal Government (Applicable if project receives Federal funding);
- I. reject an Offer that contains fraudulent information;
- J. reject an Offer that has material omissions;
- K. reject or cancel any or all Offers;
- L. reissue a Solicitation;
- M. procure any item by other means;
- N. consider and accept alternate Offers, if specified in the Solicitation, when most advantageous to the City; and/or
- O. reject an Offer because of unbalanced unit prices;

15. **NEGOTIATIONS OF PROPOSALS:** The City reserves the right to negotiate all elements which comprise the Offeror's Proposal to ensure that the best possible consideration be afforded to all concerned.
16. **CONTRACT INCORPORATION:** Offeror should be aware that the contents of the successful Offer will become a part of the subsequent contractual documents. Failure of the successful Offeror to accept this obligation may result in the cancellation of any award. Any damages accruing to the City as a result of the successful Offeror's failure to contract may be recovered from the successful Offeror.
17. **OPPORTUNITY TO PROTEST:** The Purchasing Officer has the authority to settle or resolve any claim of an alleged deficiency or protest. The procedures for notifying the City of Austin of an alleged deficiency or filing a protest are listed below. If you fail to comply with any of these requirements, the Purchasing Officer may dismiss your complaint or protest.
- A. **Prior to Offer Due Date:** If you are a prospective Offeror and you become aware of the facts regarding what you believe is a deficiency in the solicitation process before the Due Date for receipt of Offers, you must notify the City in writing of the alleged deficiency before that date, giving the City an opportunity to resolve the situation prior to the Offer Due Date.
- B. **After Offer Due Date:** If you submit an Offer to the City and you believe that there has been a deficiency in the solicitation process or the award, you have the opportunity to protest the solicitation process or the recommended award as follows:
- i. You must file written notice of your intent to protest within four (4) calendar days of the date that you know or should have known of the facts relating to the protest. If you do not file a written notice of intent within this time, you have waived all rights to protest the solicitation process or the award.
 - ii. You must file your written protest within fourteen (14) calendar days of the date that you know or should have known of the facts relating to the protest unless you know of the facts before the Offer has been closed. If you know of the facts before those dates, you must notify the City as stated above.
 - iii. You must submit your protest in writing and must include the following information:
 - (1) your name, address, telephone, and fax number;
 - (2) the solicitation number and the CIP number, if applicable;
 - (3) a detailed statement of the factual grounds for the protest, including copies of any relevant documents.
 - iv. Your protest must be concise and presented logically and factually to help with the City's review.
 - v. When the City receives a timely written protest, the Purchasing Officer will determine whether the grounds for your protest are sufficient. If the Purchasing Officer decides that the grounds are sufficient, the Purchasing Office will schedule a protest hearing, usually within five (5) working days. If the Purchasing Officer determines that your grounds are insufficient, the City will notify you of that decision in writing.
 - vi. The protest hearing is informal and is not subject to the Open Meetings Act. The purpose of the hearing is to give you a chance to present your case, it is not an adversarial proceeding. Those who may attend from the City are: representatives from the department that requested the

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purchase, the Department of Law, the Purchasing Office, and other appropriate City staff. You may bring a representative or anyone else that will present information to support the factual grounds for your protest with you to the hearing.

- vii. A decision will usually be made within fifteen (15) calendar days after the hearing.
- viii. The City will send you a copy of the hearing decision after the appropriate City staff has reviewed the decision.
- ix. When a protest is filed, the City usually will not make an award until a decision on the protest is made. However, the City will not delay an award if the City Manager or the Purchasing Officer determines that:
 - (1) the City urgently requires the supplies or services to be purchased, or
 - (2) failure to make an award promptly will unduly delay delivery or performance.In those instances, the City will notify you and make every effort to resolve your protest before the award.

18. INTERESTED PARTIES DISCLOSURE

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

<https://www.ethics.state.tx.us/File/>

19. POST OFFER DOCUMENTS REQUIRED FROM SUCCESSFUL OFFEROR:

- A. **Letters of Intent:** When a MBE/WBE Compliance Plan is required, the successful Offeror must submit to the Purchasing Officer the Letters of Intent to subcontract required by the Compliance Plan within three (3) business days after notification. Failure to submit the required letters will be grounds for rejection of the Offer.
- B. **Certificates of Insurance:** When insurance is required, the Offeror must provide proof of coverage prior to execution of a Contract. The Offeror shall provide Certificates of Insurance in the amounts and for the coverages required to the Purchasing Office within 14 calendar days after written request from the City (See also "Insurance" in Section 0400, Supplement Purchase Provisions, of the Solicitation).
- C. **Bonds:** When Bonds are required, the Offeror must provide the bonds prior to the execution of the Contract. The Offeror shall provide the Bonds, in the amounts and on the conditions required, within 14 calendar days after notification of award, or as otherwise required by the Solicitation.
- D. **Chapter 176 Conflict of Interest Disclosure:** In accordance with Chapter 176 of the Texas Local Government Code, Offeror must file a Conflict of Interest Questionnaire with the Office of the City Clerk no later than 5:00 P.M. on the seventh (7th) business day after the commencement of contract discussions or negotiations with the City or the submission of an Offer, or other writing related to a potential Contract with the City. The questionnaire is available on line at the following website for the City Clerk:

<http://www.austintexas.gov/departments/conflict-interest-questionnaire>

There are statutory penalties for failure to comply with Chapter 176.

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

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

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

10. WORKFORCE

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

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

12. INVOICES:

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

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13. PAYMENT:

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

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

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

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

15. FINAL PAYMENT AND CLOSE-OUT:

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

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

17. AUDITS and RECORDS:

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

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18. **Financial Disclosures and Assurances:** The City may request and review financial information as the City requires to determine the credit worthiness of the Contractor, including but not limited to, annual reports, audited financial statements and reports, bank letters of credit or other credit instruments. Failure of the Contractor to comply with this requirement shall be grounds for terminating the Contract.
19. **SUBCONTRACTORS:**
- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
 - B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
 - i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
 - C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
 - D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.
20. **WARRANTY-PRICE:**
- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.
 - B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

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

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discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

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

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available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

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

30. **DELAYS:**

A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

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

31. **INDEMNITY:**

A. Definitions:

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

- (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
- (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

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

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

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

A. **General Requirements.**

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- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

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

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
34. **NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's' ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.
37. **CONFIDENTIALITY:** In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to

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protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

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

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47. **INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
48. **DISPUTE RESOLUTION:**
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.
49. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
50. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.
51. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January

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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.

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

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

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

54. **EQUAL OPPORTUNITY**

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

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

- A. Definitions. As used in this paragraph –
- i. "Component" means an article, material, or supply incorporated directly into an end product.
 - ii. "Cost of components" means -

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

iii. "Domestic end product" means-

- (1) An unmanufactured end product mined or produced in the United States; or
- (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.

v. "Foreign end product" means an end product other than a domestic end product.

vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

56. **PROHIBITION OF BOYCOTT ISRAEL VERIFICATION**

Pursuant to Texas Government Code §2270.002, the City is prohibited from contracting with any "company" for goods or services unless the following verification is included in this **Contract**.

- A. For the purposes of this Section only, the terms "company" and "boycott Israel" have the meaning assigned by Texas Government Code §2270.001.
- B. If the **Principal Artist** qualifies as a "company", then the **Principal Artist** verifies that he:
 - i. does not "boycott Israel"; and
 - ii. will not "boycott Israel" during the term of this **Contract**.
- C. The **Principal Artist's** obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2270 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.

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SUPPLEMENTAL PURCHASE PROVISIONS**

The following Supplemental Purchasing Provisions apply to this solicitation:

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

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by email to erin.dvincent@austintexas.gov at least seven (7) business days prior to the solicitation due date.

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

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

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

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

OR

PURInsuranceCompliance@austintexas.gov

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

- i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage
- ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
 - (1) The policy shall contain the following provisions:
 - (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Contractor/Subcontracted Work.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.

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- (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
- iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
- iv. **Professional Liability:** The Contractor shall provide coverage, at a minimum limit of \$1,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.

If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.

- v. **Cyber Liability Insurance:** coverage of not less than \$1,000,000 each claim and \$2,000,000 annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from (1) breach of network security, (2) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (3) invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers (5) the transmission of malicious code, and (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy.

Policy shall be endorsed to name City of Austin, its Affiliates, and their respective directors, officers, employees, and agents, as additional insureds.

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

3. TERM OF CONTRACT:

- A. The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of thirty-six (36) months. The Contract may be extended beyond the initial term for up to two (2) additional twelve (12) month periods at the City's sole option. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.

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- B. Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract. Any hold over period will not exceed 120 calendar days unless mutually agreed on by both parties in writing.
- C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above.
- D. Prices are firm and fixed for the first twelve (12) months. Thereafter, price changes are subject to the Economic Price Adjustment provisions of this Contract.

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

- A. Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.
- B. The City will authorize payments when a complete set of reports for the month being invoiced has been received and the Contractor has invoiced the City following the requirements below. Invoices shall be itemized for all the services provided the prior month and shall be emailed to ARR.AP@austintexas.gov and to the Contract Operations Manager on or before the 15th of each month. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices shall contain the following information at a minimum or they will not be processed and will be returned to the Contractor:
- A unique invoice number;
 - Employee(s) name(s) and date(s) of service;
 - The ARR provided purchase order or delivery order number and the ARR contract number, if applicable;
 - The Department's name, "Austin Resource Recovery";
 - The name of the Contract Operations Manager;
 - The date the exam results were mailed to each employee during the month

The Contractor's name and, if applicable, the tax identification number on the invoice, which must exactly match the information in the Contractor's registration with the City.

	City of Austin
Department	Austin Resource Recovery
Attn:	Accounts Payable
Address	P.O. Box 1088
City, State Zip Code	Austin, TX 78767
Email	ARR.AP@austintexas.gov

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

5. **PUBLISHED PRICE LISTS:**

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- A. Offerors may quote using published price lists in the following ways:
 - i. Offerors may quote one discount from a Published Price List for all offered items to be covered in the Contract. The discount must remain firm during the life of the Contract.
- B. Two (2) copies of the list upon which the discounts are based shall be submitted with the Offer. All price lists identified in the Offer shall clearly include the Offeror's name and address, the solicitation number, prices, title of the discount and number, and the latest effective date of the price list.
- C. The price list may be superseded or replaced during the Contract term only if price revisions are the result of the Company's official price list revision. Written notification from the Contractor of price changes, along with two (2) copies of the revised list must be submitted to the Buyer in the Purchasing Office with the effective date of change to be at least thirty (30) calendar days after written notification. The City reserves the right to refuse any list revision.
- D. 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.

6. NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING:

- A. On June 14, 2018, the Austin City Council adopted Ordinance No. 20180614-056 replacing Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). The City requires Offerors submitting Offers on this Solicitation to certify that the Offeror has not in any way directly or indirectly had communication restricted in the ordinance section 2-7-104 during the No-Lobbying Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at: https://assets.austintexas.gov/purchase/downloads/New_ALO_Ordinance_No_20180614-056.pdf and is also included in the Solicitation, [Section 0200 V2, Solicitation Instructions June 26, 2018](#).

7. ECONOMIC PRICE ADJUSTMENT:

- A. **Price Adjustments:** Prices shown in this Contract shall remain firm for the first twelve (12) months of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed fifteen percent (15%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.
- B. **Effective Date:** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.
- C. **Adjustments:** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.
- D. **Indexes:** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.

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

- i. The following definitions apply:
- (1) **Base Period:** Month and year of the original contracted price (the solicitation close date).
 - (2) **Base Price:** Initial price quoted, proposed and/or contracted per unit of measure.
 - (3) **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
 - (4) **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.
 - (5) **Weight %:** The percent of the Base Price subject to adjustment based on an index change.
- ii. **Adjustment-Request Review:** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
- (1) Utilize final Compilation data instead of Preliminary data
 - (2) If the referenced index is no longer available shift up to the next higher category index.
- iii. **Index Identification:** Complete table as they may apply.

Weight of Base Price: 100%	
Database Name: Producer Price Index	
Series ID: PCU6211116211114194	
<input checked="checked" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: United States	
Description of Series ID: Offices of physicians, except mental health	
This Index shall apply to the following items of the Price Proposal: All	

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

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

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

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

8. **INTERLOCAL PURCHASING AGREEMENTS:** (applicable to competitively procured goods/services contracts).

- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.
- B. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.

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

9. **CONTRACT MANAGER:** The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Blanche Quarterman, Human Resources Manager

512-974-1986

Blanche.Quarterman@austintexas.gov

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

**CITY OF AUSTIN
SCOPE OF WORK
MEDICAL AND HEALTH EVALUATION PROGRAM
RFQS 1500 EAD4003**

1.0 PURPOSE

The City of Austin (City) seeks a qualified and experienced Contractor to provide a Medical and Health Evaluation Program (MHEP) for applicants and employees potentially exposed to levels of hazardous materials, respiratory contaminants, noise, or other occupational health-related conditions at or above the Permissible Exposure Limit (PEL) as set forth by the Federal Occupational Safety and Health Administration (OSHA). The Contractor shall conduct medical and health evaluations for Austin Resource Recovery (ARR) Commercial Driver's License (CDL) drivers and other identified participants to determine each driver's physical ability to operate a commercial vehicle based on regulations set forth by the U.S. Department of Transportation (DOT).

Additionally, the Contractor shall administer Human Performance Evaluations (HPE) for pre-employment, baseline, and annual evaluations for the City where employment will be contingent upon the applicant's ability to fulfill the essential functions of the position. The Contractor shall conduct a Functional Capacity Evaluation (FCE), Job Task Analysis (JTA), and Job Demand Assessment (JDA) to determine if an employee can meet the essential functions and physical requirements of a position. The Contractor shall also evaluate exiting employees, as required.

This Scope of Work (SOW) establishes the minimum requirements for these services. The City requires Contractors to meet all requirements listed herein. The City reserves the right to allow additional City Departments to utilize the contract.

It is the intention of this solicitation to acquire the services described herein. All items and/or services omitted from this document which are clearly necessary to meet the objectives of the services described shall be considered requirements, although not directly specified or called for herein. The Contractor shall furnish all necessary equipment, reports, services, and documentation.

2.0 BACKGROUND

The MHEP is required for personnel performing various activities within ARR. ARR currently has several employees performing various activities at the Resource Recovery Drop-Off Center (RRDOC) who may be potentially exposed to or may be in contact with gradient levels of asbestos, lead, polychlorinated biphenyls (PCB's), cadmium, or excessive noise exposures. The Household Hazardous Waste (HHW) facility within the RRDOC is estimated to utilize between 10 to 20 employees annually. OSHA requires annual and periodic exposure testing. The U.S. Environmental Protection Agency (EPA) requires employees who work in removing asbestos to have a medical surveillance examination to monitor asbestos-related health problems and to ensure that employees can work safely while wearing Personal Protective Equipment (PPE).

ARR is responsible for curbside garbage, recycling, and yard trimmings collections of residential and commercial customers. ARR is also responsible for litter abatement programs (e.g., brush/bulky item collection, street sweeping, dead animal collection, downtown litter control, and flush trucks), landfill operations, and household hazardous waste collection. (See Essential Job Functions, Attachment B-1.)

The City estimates approximately 175 City employees will utilize the services on an annual basis. There is no guarantee of a minimum number of services or quantities to be provided under the contract.

3.0 CONTRACTOR MINIMUM QUALIFICATIONS

- 3.1 Have and provide all licenses for all MDs and Registered Nurse ("RN") staff members;
- 3.2 Minimum of three years of experience successfully performing similar services before the submission of the Offer;

**CITY OF AUSTIN
SCOPE OF WORK
MEDICAL AND HEALTH EVALUATION PROGRAM
RFQS 1500 EAD4003**

- 3.3 Have calibration licenses and certifications for equipment to be used in this program;
- 3.4 Demonstrate compliance with all applicable federal, state, and local laws and regulations;
- 3.5 Reports demonstrating skill in medical review services; and
- 3.6 Have one or more facilities or have the ability to have a local facility where all MHEP services can be conducted within the corporate city limits of Austin, Texas, per Section 3, Scope of Work before the submission of the Offer.

4.0 SCOPE OF WORK

All medical services shall be provided by an RN, PA, or Physician who is board certified by the American College of Occupational and Environmental Medicine ("ACOEM"). All employee examinations shall be conducted at a medical facility within the [City Corporate Limits](#). A mobile test facility is not acceptable.

4.1 MHEP Services

- 4.1.1 The Contractor shall provide services for each employee participant in the MHEP. These services shall include but are not limited to (refer to Attachments A-1 through A-5 for recommended testing protocol and frequency for ARR):
 - A. Health History Questionnaire – Including medical and work history or OSHA, DOT, or other questionnaire specified by the City;
 - B. Physical examination by a Medical Doctor ("MD") licensed to practice in the State of Texas;
 - C. Spirometry Pulmonary Function Test – Including forced vital capacity and forced expiratory volume in one second;
 - D. Chest X-ray PA/WE "B" Reader Service – Including an X-ray per each employee. Roentgenograms shall be interpreted and classified only by a B-Reader, a board-certified radiologist or physician certified as a National Institute for Occupational Safety and Health ("NIOSH") B-Reader;
 - E. Stool Occult Blood;
 - F. Audiometric Testing to include "Whisper Test";
 - G. Completion of City's Respirator Medical Clearance forms;
 - H. Review and comments on OSHA's Respirator Medical Evaluation Questionnaire (Attachment D) ;
 - I. Titmus Vision II Screening; and
 - J. Physician's Written Diagnosis Report that shall include:
 - i. The employee's medical conditions that would place the employee at an increased health risk due to exposure to asbestos;
 - ii. Recommended limitation on the employee or on the use of PPE, such as respirators and related equipment;
 - iii. Statement that the employee has been informed by the physician of the results from exposure to asbestos and of the medical test or condition;
 - iv. Recommended limitations for an employee using motorized equipment or working around equipment in a hazardous environment; and
 - v. The ability to perform the City's essential functions-physical requirements of a position.
- 4.1.2 All HPE provided by the Contractor shall be based on essential job functions (see Attachment B-1). Additional job functions may be added during the term of the contract.
- 4.1.3 The Contractor may be required to perform an FCE, JTA, and JDA and fill out required forms as specified herein based on the employee participants' job functions. The Contractor shall perform these within 24 to 48 hours after initial request from the Contract Manager.

**CITY OF AUSTIN
SCOPE OF WORK
MEDICAL AND HEALTH EVALUATION PROGRAM
RFQS 1500 EAD4003**

4.1.4 The Contractor may be required to perform a Respiratory Fit Testing and Pulmonary Function Testing and fill out required forms as specified herein based on job task analysis provided at the time of evaluation. The Contractor shall perform these within 24 to 48 hours after initial request from the Contract Manager.

4.2 Result Reports, Testing, and Evaluation Documentation

The Contractor shall provide the City with complete documentation inclusive of all X-rays, written reports, and evaluations. The Contractor shall provide pre-offer evaluation results to the City by the close of the next business day after evaluations are complete. It is preferred these result reports be available via a web-based portal system (as described in Section 3.5, Web-Based Portal System). However, the City will also accept physical copies in the mail, within the same timeframe required if the portal was working, in the event the portal is inoperable or inaccessible. Testing methods used shall be comprehensive, legally defensible, and in accordance with all local, state, and federal laws and regulations.

4.2.1 Result Reports

Reports shall include, but are not limited to, employee name, social security number (last four digits only) and/or employee ID (if applicable), birth date, age, test history per individual, and exam results per individual. By the next business day, the reports for each category of test listed below shall be supplied for each patient tested, and one of the result responses listed under the categories listed below shall be supplied by the Contractor, along with any other pertinent information deemed necessary by the Contractor.

A. Chest X-Ray Category Responses for Evaluation Results

- i. Normal – Within normal limits or of no clinical significance.
- ii. Borderline – Recommended comparison with previous X-ray or follow-up X-ray in 60 to 90 days. Include health conditions that should be monitored or followed up on by a physician.
- iii. Medical Review Required – Recommend immediate medical follow-up with employee's Primary Care Physician (PCP).
- iv. Retest – X-ray as needed to make a determination on a medical condition.
- v. Non-Pulmonary Medical Problems – Non-pulmonary findings shall be noted. These are non-related to respirator usage but may require additional follow-up. See X-ray report for specific findings.

B. Spirometry Category Responses for Evaluation Results

- i. Normal – Forced Expiratory Volume (FEV1), Forced Vital Capacity Test ("FVC"), the FEV1/FVC ratio, or combination of the three parameters is 80% or greater. The employee's respiratory history, age, and general physical condition shall be considered in the final interpretation.
- ii. Borderline – FEV1, FVC, the FEV1/FVC ratio, or combination of the three parameters is between 70% and 79%. The employee's respiratory history, age, and general physical condition shall be considered in the final interpretation. Recommend monitoring (retest in six months) but as a general rule no immediate further evaluation is required.
- iii. Medical Review – FEV1, FVC, the FEV1/FVC ratio, or combination of the three parameters is 69% or lower. The employee's respiratory history, age, and general physical condition shall be considered in the final interpretation. Unless a previous medical examination within the past two years has provided diagnosis, medical evaluation is recommended at this time.
- iv. Retest – Test(s) shall be repeated per doctor recommendation.

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RFQS 1500 EAD4003**

4.2.2 Testing

- A. Respiratory Fit Assessment – All respiratory fit test assessment records submitted by the Contractor to the City shall contain results of all required qualitative and quantitative protocols used as required by OSHA regulations.
- B. Laboratory Analyses – The Contractor shall provide the City with all laboratory results within two business days of receipt of the results by the Contractor.
- C. Audiometric Report – The Contractor shall provide the City with a computerized or handwritten audiometric examination report detailing frequency results for each ear.
- D. Titmus II Vision Test Record – The Contractor shall provide the City with a copy of the Titmus II Vision Test Record.
- E. Post-Offer/Pre-Employment Physician Recommendation – The Contractor, using the HPE (Attachment B1) and Health History Questionnaire (Attachment C), shall determine applicant's ability to perform required duties.

4.2.3 Required Documentation

- A. Submittal to employees – The Contractor shall mail exam results to the City employee's personal mailing address unless the employee instructs Contractor otherwise. The Contractor shall include on each invoice the date the exam results were mailed to each employee during the month. The employee has the option to arrange a consultation with the Contractor for further explanation of exam results. The Contractor shall advise the employee if follow-up with a personal physician is recommended.
- B. Records – The Contractor shall maintain all records of applicant testing. These records shall include each applicant's name, the date of each test, the name of the test, and the test results. At a minimum, these records shall be available for review by the City Monday through Friday, 8:00 a.m. through 5:00 p.m. If the Contractor ceases to provide this service for the City due to the expiration or termination of this contract, the Contractor shall transfer all applicant testing records to the new contractor within 10 business days of the effective date of the City's agreement with the new contractor, or some other period of time that is mutually agreed upon in writing by the Contractor and the City. The City requires that these records be transferred electronically.
- C. Post-Offer Evaluation – The Contractor shall conduct each post-offer evaluation within three business days after contact by the City.
- D. Documentation – The Contractor shall provide, within 30 calendar days of the post-offer evaluation, a complete set of records, reports, assessments, analyses, and x-rays as described herein available to ARR via a web-based portal system, as specified in Section 3.5, Web-Based Portal System.
- E. Protection of Records – The Contractor shall be responsible for protecting all new and existing records. Any records damaged (whether damaged in transport, lost, hacked, or stolen) shall be replaced and/or remedied at the Contractor's expense.

4.3 Performance Requirements and Inspection of Work

- A. Services performed by the Contractor shall be coordinated by the Contract Manager.
- B. No photographing or recording shall be performed by the Contractor for promotional reasons unless approved by ARR.

**CITY OF AUSTIN
SCOPE OF WORK
MEDICAL AND HEALTH EVALUATION PROGRAM
RFQS 1500 EAD4003**

- C. The Contractor shall be responsible for the acquisition and transfer of existing medical records from Concentra Medical Center, located in Austin, Texas, at 10001 S-IH 35, Suite 300. This service shall be at no additional cost to the City. This shall be completed within 45 business days after contract execution.

4.4 Web-Based Portal System

- 4.4.1 The Contractor shall have a web-based portal system that the City can login into 24 hours a day, seven days a week to see the evaluations and results of all employee's tests. The Contractor shall set up separate logins for two ARR administrators that shall be password protected. This portal shall be set up within seven business days of contract award. This web-based portal system shall:

- A. Have an infrastructure that protects the information of all employees;
- B. Remain private, secure and not viewable to the public or any unauthorized party and unavailable to search engines or information-gathering systems of any kind; and
- C. Be maintained by the Contractor, including, but not limited to, system design, system configuration and development, testing, data management, technical support, and website administration.

- 4.4.2 At a minimum, the web-based portal system shall have the following functionality:

- A. User-friendly and password-protected interface;
- B. Ability to sort by name, social security number, and date of service;
- C. Ability to search by pre-employment, HPE, alcohol and drug reports, injury reports, and include flexible search options that allow the City to search for single variable search or multi-variable search options;
- D. Ability for administrators to export data, results, and reports; and
- E. An intuitive and integrated help system and detailed operational instructions.

- 4.4.3 The Contractor shall modify the web-based portal system, as necessary, to enhance, improve, or correct problems as needed. The Contractor shall incorporate mutually agreed upon recommended changes as needed within 30 calendar days of the request from the City.

5.0 CONTRACT MANAGER

The Contractor shall provide a Contract Manager who shall oversee the contract. The Contractor shall provide contact information for the Contract Manager and for an alternate contact person who shall be available by telephone between 8:00 a.m. and 5:00 p.m. Central Time, Monday through Friday. The Contractor shall also provide ARR with contact information for an emergency contact with availability after-hours and on weekends. The City reserves the right to request a change in Contract Manager.

6.0 REPORTING, PERMITS, AND INVOICES

6.1 Monthly Reports

The Contractor shall email a list of all services rendered during each month to the City by the 10th business day of the following month. The list shall contain the dates of service, the names of the employees and applicants, and the types of services provided.

6.2 Certifications, Licenses, and Permits

- 6.2.1 The Contractor shall have, maintain, and make available upon request throughout the term of any resulting contract, all licenses and permits for all staff utilized in this contract, required by federal, state, and local agencies to provide all services described herein.

- 6.2.2 The Contractor and any subcontractors shall comply with all laws applicable to the services

**CITY OF AUSTIN
SCOPE OF WORK
MEDICAL AND HEALTH EVALUATION PROGRAM
RFQS 1500 EAD4003**

under this contract, including all federal, state, and local laws, and Travis County and City ordinances. The Contractor and any subcontractors shall have and maintain current identification numbers, licenses, permits, and other governmental approvals and/or authorizations required by all applicable environmental or safety laws. The City may, at any time, terminate this contract with cause based on the Contractor's or any subcontractor's non-compliance with applicable environmental or safety laws. The Contractor shall be solely responsible for its compliance and its subcontractors' compliance.

6.3 Audits and Inspections

6.3.1 The City has the right to inspect/audit at any time, all written licenses, permits, or approvals issued by a governmental entity involving the Contractor and its agents. The Contractor shall notify and provide copies to the City of any amendments, renewals, or replacements to their applicable licenses and permits within 30 calendar days after the effective date of amendment, renewal, or replacement.

6.3.2 The City will have the right to inspect/audit, at any time, the Contractor's premises (offices and facilities) being used in support of the services under the contract. The Contractor and any subcontractors shall also allow access by the City to audit all environmental, safety, and training records.

7.0 APPLICABLE SPECIFICATIONS

All services and equipment shall comply with all current local, state, and federal laws, municipal ordinances, and regulations, and pertinent DOT and American National Standards Institute (ANSI) standards and regulations.

- A. OSHA 29 CFR 1926.58, 29 CFR 1910.134 – Respiratory Protection for Asbestos. City of Austin Risk Management manual, Volume DI, Chapter II: Section E; "Clothing/Protective Devices";
- B. EPA 40 CFR 763 Subpart G – Asbestos Abatement Projects; Worker Protection;
- C. OSHA 29 CFR 1910.1025, 1926.62 – Exposure to Lead;
- D. OSHA 29 CFR 1910.95 – Occupational Noise Exposure;
- E. OSHA 29 CFR 1910.1027 – Exposure to Cadmium;
- F. OSHA 20 CFR 1910.1030 – Bloodborne Pathogens; and
- G. OSHA 29 CFR 1910.120 – Occupational Exposure to Polychlorinated Biphenyls (PCB's).

**CITY OF AUSTIN
PURCHASING OFFICE
RESPONSE PREPARATION INSTRUCTIONS AND EVALUATION FACTORS
SOLICITATION NUMBER: RFQS 1500 EAD4003**

1. SUBMITTAL FORMAT:

Submit one original paper copy and an electronic copy of the original response in PDF version on a flash drive. The original response shall contain ink signatures and shall be typed on standard 8 ½" X 11" paper, double-sided, and have consecutively numbered pages.

The response itself shall be organized in the following format and informational sequence. Use tabs to divide each part of the response and include a Table of Contents:

Section I

Tab 1 – City of Austin Purchasing Office Documents – Complete and submit the following documents in Tab 1:

- A. Signed Offer Sheet
- B. Section 0630 Exceptions
- C. Section 0800 Non-Discrimination and Non-Retaliation Certification
- E. Section 0900 Subcontracting/Sub-consulting Utilization Form
- F. Section 0905 Subcontracting/Sub-consulting Utilization Plan
- G. If issued, all signed Addendums (all pages)

Tab 2 – Authorized Negotiator: Provide name, mailing address, email address, and telephone number of the officer or other representative in your organization authorized to negotiate and execute binding contract terms.

Tab 3 – Executive Summary: In no more than three pages, provide an Executive Summary in brief, concise terms of your qualifications related to this RFQS. Include the number of years your organization has been in business, a summary of your organization's history and experience, and how your organization is the most qualified to carry out the Scope of Work (reference Section 0500).

Tab 4 – References: Provide a list of three (3) current or previous references, preferably public entities, with which your firm has provided similar services to those described in the Scope of Work. All reference information shall be documented and verifiable. Reference contacts must be aware that they are being used as a reference and agreeable to City interview for follow-up. Each reference shall include the following:

- Organization
- Organization contract manager name and title, phone number, and email address
- Detail of the work completed for the organization
- Year contract was awarded, length of contract, annual, and total value of contract
- Twenty most commonly ordered services/tests for that agency and the number of each test performed annually for that organization

Tab 5 – Personnel Qualifications & Demonstrated Applicable Experience: Clearly demonstrate, in detail, the personnel assigned to this contract the experience and certifications required of the Scope of Work as stated in the solicitation.

- Identify the Physician(s), RNs, PAs, and other staff who will be assigned to the contract and indicate whether each such person is licensed by the American College of Occupational and Environmental Medicine.
- Provide biographies specifying relevant experience to the type of services requested, including number of years of experience, information on relevant continuing professional-education, membership(s) of professional organizations, resumes, CVs, and licenses.

**CITY OF AUSTIN
PURCHASING OFFICE
RESPONSE PREPARATION INSTRUCTIONS AND EVALUATION FACTORS
SOLICITATION NUMBER: RFQS 1500 EAD4003**

- State the primary work assigned to each person and the percentage of time each person will devote to this work. Indicate which personnel have prior experience similar in scope to this solicitation.
- Provide an explanation of the team structure; include an organizational chart, a brief narrative of activities, the roles and responsibilities, project leadership, and reporting responsibilities. Indicate how the quality of personnel over the term of the Contract will be assured.

Tab 6 – Company Experience - Include the following:

- The size of organization
- Number of years the firm has been in business
- Demonstrate your company experience in providing a Medical and Evaluation Health Program for applicants and employees potentially exposed to levels of hazardous materials, respiratory contaminants, noise, or other occupational health-related conditions at or above the Permissible Exposure Limit (PEL) as set forth by the Federal Occupational Safety and Health Administration (OSHA).
- Describe your company experience administering Human Performance Evaluations (HPE) for pre-employment, baseline, and annual evaluations where employment will be contingent upon the applicant's ability to fulfill the essential functions of the position.
- Describe your company experience conducting a Functional Capacity Evaluation (FCE), Job Task Analysis (JTA), and Job Demand Assessment (JDA) to determine if an employee can meet the essential functions and physical requirements of a position.

Tab 7 – Documentation: Section 0500 Scope of Work, Item 4.2.3.D provide a sample set of records, reports, assessments, analyses, and x-rays. Additionally, provide screen shots of the web-based portal system available to ARR. Section 0500 Scope of Work, Item 4.2.3.E provide your company policy on protecting new and existing records and detail out the process of replacing damaged records in the following situations: damaged in transport, lost, hacked, or stolen.

Section II

Acceptance Period: All responses are valid for a period of one hundred and eighty (180) calendar days subsequent to the RFQS closing date unless a longer acceptance period is offered in the response.

Proprietary or Confidential Information: All material submitted to the City becomes public property and is subject to Texas Open Records Act upon receipt. If a respondent does not desire proprietary or confidential information in the submission to be disclosed, each page must be identified and marked proprietary or confidential at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary or confidential information will result in all unmarked sections being deemed non-proprietary or non-confidential and available upon public request.

Preparation Costs: All costs directly or indirectly related to preparation of a response to the RFQS or any oral presentation required to supplement and/or clarify an offer which may be required by the City shall be the sole responsibility of the Offeror.

Compliance: The Offeror agrees to compliance with terms of this RFQS and with all applicable rules and regulations of Federal, State, and Local governing entities.

**CITY OF AUSTIN
PURCHASING OFFICE
RESPONSE PREPARATION INSTRUCTIONS AND EVALUATION FACTORS
SOLICITATION NUMBER: RFQS 1500 EAD4003**

Section III

EVALUATION FACTORS AND AWARD:

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

B. Evaluation Factors: All responses will be evaluated based on the following criteria and rankings.
Maximum 100 points.

- 1. Personnel Qualifications & Demonstrated Applicable Experience** – reference Section I, Tab 5 **(60 points)**
- 2. Company Experience** – reference Section I, Tabs 4 and 6 **(30 points)**
- 3. Documentation** – reference Section I, Tab 7 **(10 points)**

Presentations, Demonstrations Optional. The City will score submissions on the basis of the criteria listed above. The City may select a “short list” of Offerors based on those scores. “Short-listed” Offerors may be invited for presentations or demonstrations with the City. The City reserves the right to re-score “short-listed” submissions as a result, and to make award recommendations on that basis.



**CITY OF AUSTIN
PURCHASING OFFICE
EXCEPTIONS**

Solicitation Number: RFQS 1500 EAD4003

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

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

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

Indicate:

☒ **Solicitation Instructions**

Page Number 19

Section Number 19

Section Description *Letters of Intent
Alternative*

Letters of Intent: When a MBE/WBE Compliance Plan is required, the successful Offeror must submit to the Purchasing Officer the Letters of Intent to subcontract required by the Compliance Plan within three ~~(1)~~ **(3)** business days after notification. Failure to submit the required letters will be grounds for rejection of the Offer.

Indicate:

☒ **0300 Standard Purchase Terms & Conditions**
0400 Supplemental Purchase Provisions
0500 Scope of Work
0635 Performance Measures Form

Page Number 20

Section Number 3

Section Description *Contractor to Package Deliverables
Alternative*

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.~~ Reserved.

Indicate:

- X 0300 Standard Purchase Terms & Conditions
0400 Supplemental Purchase Provisions
0500 Scope of Work
0635 Performance Measures Form

Page Number 5

Section Number 17(B)

Section Description *Audits and Records*

Alternative Language:

- iv. Custodian. Contractor shall serve as the custodian of medical records created at the clinic during the term of this Agreement. Contractor, as custodian of records shall abide by all local, state, and federal requirements for such record retention during and after the term of this Agreement. Contractor shall also abide by all applicable laws related to Contractor and the medical service record retention. City acknowledges that Contractor will provide copies of medical records to any third-party requestor (with the appropriate executed release from the employee/patient, court order, or business affidavit, as applicable).
- v. Access. City understands and acknowledges that the City is not entitled to access any patient medical records except to the extent allowed by law. Contractor is a "covered entity" as enumerated in 45 CFR §160.103. As a covered entity, Contractor may only disclose protected health information as authorized by and to the extent allowed by law.
- vi. Retention and Destruction. Upon the termination of this Agreement for any reason, Contractor shall maintain all records created against the statutory and regulatory requirements. Should City request records be maintained by Contractor beyond any state, local or federal rule due to an ongoing audit or legal matter, then City shall be invoiced for such retention for as long as such records are retained until written notice from City to destroy such retained records.

This Section 17.C shall survive the termination of this Agreement.

Indicate:

- X 0300 Standard Purchase Terms & Conditions
0400 Supplemental Purchase Provisions
0500 Scope of Work
0635 Performance Measures Form

Page Number 1

Section Number 9

Section Description *Place and Condition of Work*

Alternative Language:

The ~~City shall provide the Contractor access to the sites where the Contractor is to perform the services at its local business locations~~ 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

Indicate:

- X 0300 Standard Purchase Terms & Conditions
0400 Supplemental Purchase Provisions
0500 Scope of Work
0635 Performance Measures Form

Page Number 22

Section Number 13(D)

Section Description *Payment*

Alternative Language:

~~A. 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:~~

- ~~iv. delivery of defective or non-conforming Deliverables by the Contractor;~~
- ~~v. 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;~~
- ~~vi. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;~~
- ~~vii. 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;~~
- ~~viii. 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;~~
- ~~ix. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or failure of the Contractor to comply with any material provision of the Contract Documents.~~

Indicate:

- X 0300 Standard Purchase Terms & Conditions
0400 Supplemental Purchase Provisions
0500 Scope of Work
0635 Performance Measures Form

Page Number 24

Section Number 20(A)(C)

Section Description *Warranty-Price*

Alternative Language:

~~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.~~

~~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.~~

Indicate:

- X 0300 Standard Purchase Terms & Conditions
0400 Supplemental Purchase Provisions
0500 Scope of Work
0635 Performance Measures Form

Page Number 26

Section Number 28

Section Description *Termination Without Cause*

Alternative Language:

~~The City~~ Either party 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 to the other party. 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.

Indicate:

- 0300 Standard Purchase Terms & Conditions**
- X 0400 Supplemental Purchase Provisions**
- 0500 Scope of Work**
- 0635 Performance Measures Form**

Page Number 35

Section Number 3

Section Description *Term of the Contract*

Alternative Language:

The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of thirty-six (36) months. The Contract may be extended beyond the initial term for up to two (2) additional twelve (12) month periods ~~at the City's sole option~~ upon mutual agreement of the parties. 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.

Indicate:

- 0300 Standard Purchase Terms & Conditions**
- X 0400 Supplemental Purchase Provisions**
- 0500 Scope of Work**
- 0635 Performance Measures Form**

Page Number 36

Section Number 3(D)

Section Description *Term of the Contract*

Alternative Language:

Prices are firm and fixed for the ~~first twelve~~ twenty-four (24) months. Thereafter, price changes are subject to the ~~Economic Price Adjustment~~ an automatic increase of two (2%) percent annually thereafter ~~provisions of this Contract.~~

Indicate:

- 0300 Standard Purchase Terms & Conditions**
- X 0400 Supplemental Purchase Provisions**
- 0500 Scope of Work**
- 0635 Performance Measures Form**

Page Number 37

Section Number 7

Section Description *Economic Price Adjustment*

Alternative Language:

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.

Indicate:

- 0300 Standard Purchase Terms & Conditions
- 0400 Supplemental Purchase Provisions
- X 0500 Scope of Work
- 0635 Performance Measures Form

Page Number 41

Section Number 4.0

Section Description *Scope of Work*

Alternative Language:

All medical services ~~shall~~may be provided by an RN, PA, or Physician who is board certified by the American College of Occupational and Environmental Medicine ("ACOEM"). All employee examinations shall be conducted at a medical facility within the [City Corporate Limits](#). A mobile test facility is not acceptable.

Indicate:

- 0300 Standard Purchase Terms & Conditions
- 0400 Supplemental Purchase Provisions
- X 0500 Scope of Work
- 0635 Performance Measures Form

Page Number 41

Section Number 4.1

Section Description *MHEP Services*

Alternative Language:

Physical examination by a Medical Doctor ("MD") or Advanced Practice Clinician ("APC") licensed to practice in the State of Texas;

Audiometric Testing to include "Whisper Test" (only provided in DOT physical);

Indicate:

- 0300 Standard Purchase Terms & Conditions
- 0400 Supplemental Purchase Provisions
- X 0500 Scope of Work
- 0635 Performance Measures Form

Page Number 41

Section Number 4.1.3

Section Description *Untitled*

Alternative Language:

The Contractor may be required to perform an FCE, JTA, and JDA and fill out required forms as specified herein based on the employee participants' job functions. The Contractor shall ~~perform~~ schedule these within 24 to 48 hours after initial request from the Contract Manager.

Indicate:

- 0300 Standard Purchase Terms & Conditions
- 0400 Supplemental Purchase Provisions
- X 0500 Scope of Work
- 0635 Performance Measures Form

Page Number 44

Section Number 4.2.2

Section Description *Testing*

Alternative Language:

Respiratory Fit Assessment – All respiratory fit test assessment records submitted by the Contractor to the City shall contain results of all required qualitative and quantitative (at designated locations) protocols used as required by OSHA regulations.

Indicate:

- 0300 Standard Purchase Terms & Conditions
- 0400 Supplemental Purchase Provisions
- X 0500 Scope of Work
- 0635 Performance Measures Form

Page Number 44

Section Number 4.2.3

Section Description *Required Documentation*

Alternative Language:

Submittal to employees — ~~The Contractor shall mail exam results to the City employee's personal mailing address unless the employee instructs Contractor otherwise. The Contractor shall include on each invoice the date the exam results were mailed to each employee during the month.~~ The employee has the option to arrange a consultation with the Contractor for further explanation of exam results. The Contractor shall advise the employee if follow-up with a personal physician is recommended.

Indicate:

- 0300 Standard Purchase Terms & Conditions
- 0400 Supplemental Purchase Provisions
- X 0500 Scope of Work
- 0635 Performance Measures Form

Page Number 45

Section Number 6.1

Section Description *Monthly Reports*

Alternative Language:

The Contractor shall email a list of all services rendered during each month to the City ~~by the 10th business day of the following month.~~ The list shall contain the dates of service, the names of the employees and applicants, and the types of services provided.

City of Austin, Texas
Section 0800
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas
Equal Employment/Fair Housing Office

To: City of Austin, Texas,

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

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

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

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

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

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

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

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

not continue.

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

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

Sanctions:

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

Term:

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

Dated this 19th day of September, 2019

CONTRACTOR

Occupational Health Centers
of the Southwest, P.A. dba
Concentra Medical Centers

Authorized Signature


President, Treasurer and
Corporate Secretary

Title

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

PROCUREMENT PROGRAM

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

SOLICITATION NUMBER: RFQS 1500 EAD4003

SOLICITATION TITLE: Medical and Evaluation Health Program

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

Instructions:

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

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

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

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

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

Offeror Information			
Company Name	Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers		
City Vendor ID Code			
Physical Address	10001 South IH-35, Suite 300		
City, State Zip	Austin, TX 78747		
Phone Number	512.440.0555	Email Address	mmaccallon@concentra.com
Is the Offeror City of Austin M/WBE certified?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES Indicate one: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture		

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

Robert G. Hassett, DO, MPH; President, Treasurer and Corporate Secretary

September 19, 2019

Name and Title of Authorized Representative (Print or Type)

Signature/Date



Not Applicable

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

SOLICITATION NUMBER: RFQS 1500 EAD4003

SOLICITATION TITLE: Medical and Evaluation Health Program

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

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

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

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

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

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

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

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

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

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

GOOD FAITH EFFORTS CHECK LIST –

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

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

Not Applicable

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

SOLICITATION NUMBER: RFQS 1500 EAD4003

SOLICITATION TITLE: Medical and Evaluation Health Program

- ☐ **Follow up with responding M/WBE firms.** Offeror shall follow up with all M/WBE firms that respond to the Offeror's request. Offerors shall provide written evidence of their contact(s): emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.
- ☐ **Advertise.** Offerors shall place an advertisement of the subcontracting opportunity in a local publication (i.e. newspaper, minority or women organizations, or electronic/social media). Offerors shall include a copy of their advertisement, including the name of the local publication and the date the advertisement was published.
- ☐ **Use a Community Organization.** Offerors shall solicit the services of a community organization(s); minority persons/women contractors'/trade group(s); local, state, and federal minority persons/women business assistance office(s); and other organizations to help solicit M/WBE firms. Offerors shall provide written evidence of their Proof of contact(s) include: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, organization contacted, phone number, email address and contact person.

Not Applicable

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

SOLICITATION NUMBER: RFQS 1500 EAD4003
SOLICITATION TITLE: Medical and Evaluation Health Program

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

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

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

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

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

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

Reviewing Counselor

Date

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

Director/Assistant Director or Designee

Date

Attachment A-1

Department of Transportation (DOT) Exam

Exam Component	Exam Type		
	Initial Exam	Periodic Exam	
Driver's Information	✓	○	
Health History	✓	○	
Vision	✓	○	
Hearing	✓	○	
Blood Pressure/Pulse Rate	✓	○	
Laboratory and Other Test Findings	✓	○	
Physical Examination	✓	○	
Driver Certification Status	✓	○	

- As determined by DOT requirements and/or physician recommendation.

Attachment A-2

Household Hazardous Waste (HHW)

Exam Component	Exam Type		
	Initial Exam	Periodic Exam	Exit Exam
History	✓	✓	✓
Physical Examination	✓	✓	✓
Vital Statistics	✓	✓	✓
Vision	✓	✓	✓
Audiogram	✓	✓	✓
Pulmonary Function Test	✓	✓	✓
Dipstick Urinalysis	✓	✓	✓
Resting EKG	✓	✓	✓
Chest X-ray	✓	**	✓
Blood Chemistry Profile	✓	✓	✓
PCB Screen	✓	✓	✓
Tetanus	✓	***	✓
Screening:			
Zinc Protoporphyrin	✓	+	✓
Urinary Arsenic	✓	+	✓
Urinary Mercury	✓	+	✓
Urinary Cadmium	✓	+	✓
Pesticides/Herbicides	✓	+	✓
		+	

** Recommended every five years, or when an employee has been exposed to contaminants known or suspected of causing lung cancer, or following an abnormal X-ray.

*** Recommended every ten years.

+ To be determined by physician based on evaluation.

Attachment A-3 Landfill

Exam Component	Exam Type		
	Initial Exam	Periodic Exam	Exit Exam
Tetanus	✓	***	
PCB Screening	✓	✓	✓

*** Recommended every ten years.

Attachment A-4 Respiratory Evaluation

Exam Component	Exam Type		
	Initial Exam	Periodic Exam	Exit Exam
Respiratory Evaluation Questionnaire	✓	✓	
Physical Exam	+	+	
Pulmonary Function Test	+	+	
Fit Test (employee brings personal respirator)	+	+	

+ To be determined by physician based on evaluation.

Attachment A-5

Auditory Examination

Exam Component	Exam Type		
	Initial Exam	Periodic Exam	Exit Exam
Audiogram	✓	✓	✓



**Post Offer/Pre-Employment Health
Questionnaire**

The information requested herein will not be used for any purpose inconsistent with the Americans with Disabilities Act. Information may be used to assist the company in presenting a claim for reimbursement to the Subsequent Injury Trust Fund, which is a program designed to encourage the offering of job opportunities to persons who have disabilities due to illness, disease, or injury, which might otherwise hinder employment.

Name: _____
(First) (Middle) (Last)

Social Security Number: _____

Date of Birth: _____

Date of Employment _____

I. Are you presently under medical care or treatment for any of the following conditions?

	<u>Yes</u>	<u>No</u>
1. Epilepsy	_____	_____
2. Diabetes	_____	_____
3. Environmental Allergies	_____	_____
4. Heat Related Illnesses	_____	_____
5. Arthritis or similar degenerative joint disease	_____	_____
6. Amputation of foot, leg, hand, or arm	_____	_____
7. Loss of sight of one or both eyes or a partial loss of vision greater than 75% in both eyes	_____	_____
8. Polio or any continuing effects from such condition	_____	_____
9. Cerebral palsy	_____	_____
10. Muscular dystrophy	_____	_____
11. Multiple sclerosis	_____	_____
12. Parkinson's disease	_____	_____
13. Heart or blood vessel disorders	_____	_____
14. Phlebitis	_____	_____
15. Thrombosis	_____	_____
16. Pulmonary embolism	_____	_____
17. Tuberculosis	_____	_____
18. Emphysema, asthma, or any other respiratory disorders	_____	_____
19. Hemophilia or any other diagnosed blood disorders	_____	_____
20. Sickle cell anemia	_____	_____
21. Hyperinsulinism, hyperglycemia, or hypoglycemia	_____	_____
22. Chronic osteomyelitis	_____	_____
23. Ankylosis or fusion of any major joints	_____	_____
24. Ruptured, herniated, bulging, or slipped disc of the neck or back	_____	_____
25. Back or neck problems of any kind	_____	_____
26. Loss of hearing	_____	_____

27. Any permanent condition that constitutes impairment to a hand, foot, leg or arm, or to the body as a whole

- I. Within the last five years, have you been hospitalized or treated for any of the conditions listed above? If so, please list:

- II. Are you currently receiving treatment or have you ever received treatment for a medically diagnosed communicable disease, infectious disease, or any condition affecting the immune system, such as hepatitis, HIV, tuberculosis, or any other related condition? If so, please list:

- III. Are you currently receiving treatment or have you ever received treatment for a medically diagnosed mental illness or disorder such as severe depression, manic-depressive condition, anxiety, schizophrenia, or any similar or related conditions? If so, please list:

- IV. Are you currently receiving treatment or have you ever received treatment for a medically diagnosed alcohol or chemical dependency condition? If so, please list:

- V. Are you presently taking any prescribed medications? If yes, please list:

- VI. Is there any physical condition which we should be aware of in the event of a medical emergency to you? If so, please identify the condition and, if applicable, your treating physician:

FAILURE TO RESPOND TO ANY OF THE FOREGOING QUESTIONS WILL BE ACCEPTED AND RELIED UPON BY THE EMPLOYER AS A NEGATIVE ANSWER TO THE QUESTION.

Employee

Date

A copy of this statement will go with you to the doctor providing your Human Performance Evaluation. A copy of this statement will remain in your permanent medical file.

OSHA INFOSHEET

Respirator Medical Evaluation Questionnaire

Respirators must be used in workplaces in which employees are exposed to hazardous airborne contaminants. When respiratory protection is required employers must have a respirator protection program as specified in OSHA's Respiratory Protection standard (29 CFR 1910.134). Before wearing a respirator, workers must first be medically evaluated using the mandatory medical questionnaire or an equivalent method. To facilitate these medical evaluations, this INFOSHEET includes the mandatory medical questionnaire to be used for these evaluations.

Medical Evaluation and Questionnaire Requirements

The requirements of the medical evaluation and for using the questionnaire are provided below:

- The employer must identify a physician or other licensed health care professional (PLHCP) to perform all medical evaluations using the medical questionnaire in Appendix C of the Respiratory Protection standard or a medical examination that obtains the same information. (See Paragraph (e)(2)(i).)
- The medical evaluation must obtain the information requested in Sections 1 and 2, Part A of Appendix C. The questions in Part B of Appendix C may be added at the discretion of the health care professional. (See Paragraph (e)(2)(ii).)
- The employer must ensure that a follow-up medical examination is provided for any employee who gives a positive response to any question among questions 1 through 8 in Part A Section 2, of Appendix C, or whose initial medical examination demonstrates the need for a follow-up medical examination. The employer must provide the employee with an opportunity to discuss the questionnaire and examination results with the PLHCP. (See Paragraph (e)(3)(i).)
- The medical questionnaire and examinations must be administered confidentially during the employee's normal working hours or at a time and place convenient to the employee and in a manner that ensures that he or she understands its content. The employer must not review the employee's responses, and the questionnaire must be provided directly to the PLHCP. (See Paragraph (e)(4)(i).)

Excerpt from Appendix C of 29 CFR 1910.134: OSHA Respirator Medical Evaluation Questionnaire

To the employer: Answers to questions in Section 1, and to question 9 in Section 2 of Part A, do not require a medical examination.

To the employee: Your employer must allow you to answer this questionnaire during normal working hours, or at a time and place that is convenient to you. To maintain your confidentiality, your employer or supervisor must not look at or review your answers, and your employer must tell you how to deliver or send this questionnaire to the health care professional who will review it.

Once filled out, this form must be given to the PLHCP. This form should **not** be submitted to OSHA.

	YES	NO
c. Chronic bronchitis	<input type="checkbox"/>	<input type="checkbox"/>
d. Emphysema	<input type="checkbox"/>	<input type="checkbox"/>
e. Pneumonia	<input type="checkbox"/>	<input type="checkbox"/>
f. Tuberculosis	<input type="checkbox"/>	<input type="checkbox"/>
g. Silicosis	<input type="checkbox"/>	<input type="checkbox"/>
h. Pneumothorax (collapsed lung)	<input type="checkbox"/>	<input type="checkbox"/>
i. Lung cancer	<input type="checkbox"/>	<input type="checkbox"/>
j. Broken ribs	<input type="checkbox"/>	<input type="checkbox"/>
k. Any chest injuries or surgeries	<input type="checkbox"/>	<input type="checkbox"/>
l. Any other lung problem that you've been told about	<input type="checkbox"/>	<input type="checkbox"/>
4. Do you <i>currently</i> have any of the following symptoms of pulmonary or lung illness?	<input type="checkbox"/>	<input type="checkbox"/>
a. Shortness of breath	<input type="checkbox"/>	<input type="checkbox"/>
b. Shortness of breath when walking fast on level ground or walking up a slight hill or incline	<input type="checkbox"/>	<input type="checkbox"/>
c. Shortness of breath when walking with other people at an ordinary pace on level ground	<input type="checkbox"/>	<input type="checkbox"/>
d. Have to stop for breath when walking at your own pace on level ground	<input type="checkbox"/>	<input type="checkbox"/>
e. Shortness of breath when washing or dressing yourself	<input type="checkbox"/>	<input type="checkbox"/>
f. Shortness of breath that interferes with your job	<input type="checkbox"/>	<input type="checkbox"/>
g. Coughing that produces phlegm (thick sputum)	<input type="checkbox"/>	<input type="checkbox"/>
h. Coughing that wakes you early in the morning	<input type="checkbox"/>	<input type="checkbox"/>
i. Coughing that occurs mostly when you are lying down	<input type="checkbox"/>	<input type="checkbox"/>
j. Coughing up blood in the last month	<input type="checkbox"/>	<input type="checkbox"/>
k. Wheezing	<input type="checkbox"/>	<input type="checkbox"/>
l. Wheezing that interferes with your job	<input type="checkbox"/>	<input type="checkbox"/>
m. Chest pain when you breathe deeply	<input type="checkbox"/>	<input type="checkbox"/>
n. Any other symptoms that you think may be related to lung problems	<input type="checkbox"/>	<input type="checkbox"/>
5. Have you <i>ever had</i> any of the following cardiovascular or heart problems?		
a. Heart attack	<input type="checkbox"/>	<input type="checkbox"/>
b. Stroke	<input type="checkbox"/>	<input type="checkbox"/>
c. Angina	<input type="checkbox"/>	<input type="checkbox"/>
d. Heart failure	<input type="checkbox"/>	<input type="checkbox"/>

	YES	NO
e. Swelling in your legs or feet (not caused by walking)	<input type="checkbox"/>	<input type="checkbox"/>
f. Heart arrhythmia (heart beating irregularly)	<input type="checkbox"/>	<input type="checkbox"/>
g. High blood pressure	<input type="checkbox"/>	<input type="checkbox"/>
h. Any other heart problem that you've been told about	<input type="checkbox"/>	<input type="checkbox"/>
6. Have you <i>ever had</i> any of the following cardiovascular or heart symptoms?	<input type="checkbox"/>	<input type="checkbox"/>
a. Frequent pain or tightness in your chest	<input type="checkbox"/>	<input type="checkbox"/>
b. Pain or tightness in your chest during physical activity	<input type="checkbox"/>	<input type="checkbox"/>
c. Pain or tightness in your chest that interferes with your job	<input type="checkbox"/>	<input type="checkbox"/>
d. In the past two years, have you noticed your heart skipping or missing a beat	<input type="checkbox"/>	<input type="checkbox"/>
e. Heartburn or indigestion that is not related to eating	<input type="checkbox"/>	<input type="checkbox"/>
f. Any other symptoms that you think may be related to heart or circulation problems	<input type="checkbox"/>	<input type="checkbox"/>
7. Do you <i>currently</i> take medication for any of the following problems?	<input type="checkbox"/>	<input type="checkbox"/>
a. Breathing or lung problems	<input type="checkbox"/>	<input type="checkbox"/>
b. Heart trouble	<input type="checkbox"/>	<input type="checkbox"/>
c. Blood pressure	<input type="checkbox"/>	<input type="checkbox"/>
d. Seizures	<input type="checkbox"/>	<input type="checkbox"/>
8. If you've used a respirator, have you <i>ever had</i> any of the following problems? (If you've never used a respirator, check the following space and go to question 9.) <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Eye irritation	<input type="checkbox"/>	<input type="checkbox"/>
b. Skin allergies or rashes	<input type="checkbox"/>	<input type="checkbox"/>
c. Anxiety	<input type="checkbox"/>	<input type="checkbox"/>
d. General weakness or fatigue	<input type="checkbox"/>	<input type="checkbox"/>
e. Any other problem that interferes with your use of a respirator	<input type="checkbox"/>	<input type="checkbox"/>
9. Would you like to talk to the health care professional who will review this questionnaire about your answers to this questionnaire?	<input type="checkbox"/>	<input type="checkbox"/>
<p>Questions 10 to 15 below must be answered by every employee who has been selected to use either a full-facepiece respirator or a self-contained breathing apparatus (SCBA). For employees who have been selected to use other types of respirators, answering these questions is voluntary.</p>		
10. Have you <i>ever lost</i> vision in either eye (temporarily or permanently)?	<input type="checkbox"/>	<input type="checkbox"/>
11. Do you <i>currently</i> have any of the following vision problems?	<input type="checkbox"/>	<input type="checkbox"/>
a. Wear contact lenses	<input type="checkbox"/>	<input type="checkbox"/>
b. Wear glasses	<input type="checkbox"/>	<input type="checkbox"/>
c. Color blind	<input type="checkbox"/>	<input type="checkbox"/>
d. Any other eye or vision problem	<input type="checkbox"/>	<input type="checkbox"/>

	YES	NO
12. Have you <i>ever had</i> an injury to your ears, including a broken eardrum?	<input type="checkbox"/>	<input type="checkbox"/>
13. Do you <i>currently</i> have any of the following hearing problems?	<input type="checkbox"/>	<input type="checkbox"/>
a. Difficulty hearing	<input type="checkbox"/>	<input type="checkbox"/>
b. Wear a hearing aid	<input type="checkbox"/>	<input type="checkbox"/>
c. Any other hearing or ear problem	<input type="checkbox"/>	<input type="checkbox"/>
14. Have you <i>ever had</i> a back injury?	<input type="checkbox"/>	<input type="checkbox"/>
15. Do you <i>currently</i> have any of the following musculoskeletal problems?	<input type="checkbox"/>	<input type="checkbox"/>
a. Weakness in any of your arms, hands, legs, or feet	<input type="checkbox"/>	<input type="checkbox"/>
b. Back pain	<input type="checkbox"/>	<input type="checkbox"/>
c. Difficulty fully moving your arms and legs	<input type="checkbox"/>	<input type="checkbox"/>
d. Pain and stiffness when you lean forward or backward at the waist	<input type="checkbox"/>	<input type="checkbox"/>
e. Difficulty fully moving your head up or down	<input type="checkbox"/>	<input type="checkbox"/>
f. Difficulty fully moving your head side to side	<input type="checkbox"/>	<input type="checkbox"/>
g. Difficulty bending at your knees	<input type="checkbox"/>	<input type="checkbox"/>
h. Difficulty squatting to the ground	<input type="checkbox"/>	<input type="checkbox"/>
i. Climbing a flight of stairs or a ladder carrying more than 25 lbs.	<input type="checkbox"/>	<input type="checkbox"/>
j. Any other muscle or skeletal problem that interferes with using a respirator	<input type="checkbox"/>	<input type="checkbox"/>

This infosheet does not include the questions in Part B because they are not mandatory; rather, they may be added to the questionnaire at the discretion of the health care professional who will review the questionnaire.

OSHA Educational Materials

OSHA has an extensive publications program. For a listing of free items, visit OSHA's web site at www.osha.gov/publications or contact the OSHA Publications Office, U.S. Department of

Labor, 200 Constitution Avenue, N.W., N-3101, Washington, DC 20210. Telephone (202) 693-1888 or fax to (202) 693-2498.

Contacting OSHA

To report an emergency, file a complaint or seek OSHA advice, assistance or products, call (800) 321-OSHA (6742) or contact your nearest OSHA regional, area, or State Plan office; TTY: 1-877-889-5627.

This InfoSheet is not a standard or regulation, and it creates no new legal obligations. It contains recommendations as well as descriptions of mandatory safety and health standards. The recommendations are advisory in nature, informational in content, and are intended to assist employers in providing a safe and healthful workplace. The *Occupational Safety and Health Act* requires employers to comply with safety and health standards and regulations promulgated by OSHA or by a state with an OSHA-approved state plan. In addition, the Act's General Duty Clause, Section 5(a)(1), requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm.



U.S. Department of Labor



GARET MacCALLON

Bastrop, Texas 78602

Ph: (281) 614-9022 • Email: GaretMacCallon@gmail.com



QUALIFICATIONS

Assertive, self-motivated, and goal-oriented medical professional. Over 11 years of overall medical experience with at least 9 years of concentrated management experience with over 30 direct reports. Concise communicator with proven strengths in employee management, customer service, and relationship building. Exceptional mentor, leader, and coach while consistently recognized as a top employee by upper management. Proficient in Microsoft Suite Software, EMDs, Allscripts, and Centricity software, ICD 9/ 10 codes, interpreting legislation, billing and insurance authorizations, patient relations, issuing prescriptions, maintaining and ordering supplies, blood draws and IVs, surgery sterile prep, both ultrasound and x-ray imaging, budgeting and all finances, ACLS care, and the extensive time management of running a large, multi-site medical practice.

EDUCATION

Clements High School – Fall 2000 to Spring 2003 - *Accelerated Graduation Program*

Texas A&M University at Galveston- Fall 2003 to Fall 2005 - *Marine Biology and Nursing Prerequisites, Transferred*

Galveston Community College/University of Texas Medical Branch - Spring 2006 to Fall 2009 - *EMT-B, EMT-I, EMT-Paramedic, and EMS Instructor, BS/AS Emergency Services*

CERTIFICATIONS

CPR: Expires 06/2019

Paramedic: State ID 704502 Expires 06/2019

ACLS: most recently completed 03/2016

PALS: most recently completed 03/2016

Public Notary: Expires 04/2019

PROFESSIONAL EXPERIENCE

Concentra - Austin, TX

October 2016 – Present, Paramedic/ Center Operations Director- As the Center Operations Director, presides over high volume clinic seeing 100+ patients a day. Handle all financials, employee credentialing, cash management, inventory, compliance, and reporting both state and internal. Provide all training and staff management in the building while staffing/ managing the PRN pool and weekend schedules for the Austin area. Consistently takes on extra tasks for the Austin region. Extensive client and patient management as well as new client capture and retention. Reports directly to the Area Operations Director.

Has consistently been recognized by upper management as a top performer. Since managing this clinic it has gone from sub par patient ratings to elite twice in 2017; in 2018, consistently exceeded expectations on patient volumes and budget; scored 96 out of 100 on the last two center audits; and moving from scores of 61/100 on monthly scores to 99/100 peaking at ranked 18th in the nation out of 529 centers.

Advanced Pain Care (Pain Management South Locations with Dr. Malone) - Austin, TX

November 2014 –October 2016, Paramedic/ Clinic Manager - As the Clinic Manager, presided over four clinics front to back. Using Paramedic licensure, responsible for performing ALS Patient Care as needed. Managed a large 30+ member staff with confidence and compassion. Ensured compliance and patient advocacy through auditing, quality control, and staff training. Daily duties include ordering, budgeting, cash management, deposits, and reporting. Other duties also include trouble shooting all billing and documentation issues. Reported directly to the CEO and COO while assertively running four standalone clinics in their entirety.

ProloAustin (Physical Medicine and Rehab Clinic with Dr. Bradley Fullerton) - Austin, TX

August 2012 – November 2014, Paramedic/ Clinical Manager - As the Clinical Manager, work very closely with the presiding Physician to ensure smooth clinic operations. Using Paramedic licensure, responsible for performing ALS Patient Care as needed. Handle a high volume of prescriptions, patient calls, and patient concerns. Daily duties include ordering, budgeting, and billing. Other duties also include managing online marketing and social media. Managed communication with MA staff, as well as training and delegation of duties. Prepared staff schedule and ensured adequate coverage. Collaborated with director to manage all staff issues.

DCI Biologicals LLC - Austin, TX

January 2011 – August 2012, Paramedic/ Physician Substitute/ Medical Supervisor – Responsibilities included maintaining quality control of biologic product. Implemented thorough reinforcement of donor safety. Using Paramedic licensure, performed ALS Patient Care when needed. Managed staff to ensure daily compliance and safety according to OSHA and federal regulations. Delegation, training, and scheduling to assure maximum efficiency. Worked with diverse populations and built strong client relations.

American Medical Response - Austin, TX

January 2010 – January 2011, EMT Basic, Paramedic- Performed Patient Care, Emergency Responding, and specialized in Neonate Care. Responded to calls for medical assistance at accidents, emergencies, and other related incidents. Gave emergency treatment to patients who were seriously ill or had life-threatening conditions. Responsible for writing up all case notes to report the patient's history, condition and treatment to relevant hospital staff and coroners' offices. As a Paramedic worked with the neonate transport/ life flight team.

Legacy EMS - Coldspring, TX

April 2009 – January 2010, EMT Basic - While obtaining Paramedic licensure, performed Patient Care and Emergency Responding duties. Responded to emergency calls from various patients or individuals who were in need of immediate care. Distinguished the cause and degree of illness or injury and demonstrated priority for needed emergency care. Rendered pre-hospital emergency medical care of simple and multiple system traumas and illnesses.

Gulf Greyhound Park – League City, TX

April 2009 – January 2010, EMT Basic - While obtaining Paramedic licensure, performed Patient Care and was the on-site Medic on duty. Stocked and maintained BLS office to a state of readiness. Worked with diverse populations and built strong client relations.

Galveston Area Ambulance Authority – Galveston, TX

March 2008 - May 2009, EMT-Basic - While in school to obtain Paramedic licensure, performed Patient Care and Emergency Responding. Responded to emergency calls from various patients or individuals who are in need of immediate care. Distinguished the cause and severity of illness or injury and demonstrated priority for needed emergency care. Rendered pre-hospital emergency medical care of simple and multiple system traumas and illnesses.

INTERESTS-Reading, scuba diving, international travel, fostering neglected kids, raising and breeding Great Danes.

Mi Mickey Yang, MD

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mmyang1138@gmail.com

Objective

Provide effective and efficient medical care for patients, engage in quality improvement and effectiveness programs to prevent and treat injuries and chronic diseases. Improve healthcare policy and administration to maximize health care delivery to individuals and populations.

Key Skills

- Training in Preventive Medicine and Public Health
- Experience with clinical Primary Care and Occupational Health
- Board eligible for General Preventative Medicine and Occupational Medicine
- Experience with Quality Improvement and Community Health Assessment
- Worked with biostatistics, data analysis and study design
- Master's in Public Health

Work Experience

Current – Texas Department of State Health Services

7/1/2016 – 7/1/2018 (expected)

Preventive Medicine Resident

- Clinical Occupational and Preventive Health experience
- Public Health policy and administration
- Cancer Prevention (MD Anderson)
- Masters of Public health
- Epidemiology, Biostatistics, Health Administration/Policy
- Quality Improvement: HCV Registry, Clinical Case Management Severity Tool (Humana)

Previous – United Health Group, Corpus Christi, Texas

11/30/2015 – 6/26/2016

Clinical Quality Analyst – Medical record review

- Clinical outcomes analysis
- Quality improvement
- Health administration and policy

Previous - Lawrence Berkeley National Laboratory, Berkeley, California

2/14/14 – 10/30/2015

Post-graduate Fellow – Electron Microscopy of LDL/HDL and interactions with drug candidates

- Statistical data analysis for pharmaceutical research
- Electron microscopy and sample preparation

Residency – UCSF East Bay Surgery Program, Oakland, California

6/27/11 - 6/27/13

Surgical Intern/Resident

- Clinical patient management
- Surgical evaluation of urgent and emergent diseases

Education

Graduate – UT Houston School of Public Health, Austin Regional Campus

8/2016 – 5/2018

MPH, Customized

Medical School - University of Texas School of Medicine at San Antonio, San Antonio, Texas

08/2007 - 06/2011

M.D., 05/2011

Undergraduate – California Institute of Technology

2002 – 2006

B.S., Biology 06/2006

Supplementary

Licensure

- Texas Medical License
- DEA License

Occupational Medicine Orthopedic Workshop – Feb 2018

- Focal, high yield musculoskeletal exams
- How to document workplace injuries in clear, precise, useful manner
- Basic principles used to evaluate worker's compensation claims

FMCSA Medical Examiner

- In progress (expected by 7/1/2018)

Publications/Presentations

Yang, M., Sabalerio, R., Melville, S., (March 2018) Community Health Assessment: Disparities in Sexually Transmitted Infections by Age Group, Sex and Race in DSHS Public Health Region 7. Presented At: *Texas Public Health Association Conference 2018*; Waco TX

Zhang, M., Lei, D., Peng, B., Yang, M., Zhang, L., Charles, M. A., ... & Ren, G. (2017). Assessing the mechanisms of cholesteryl ester transfer protein inhibitors. *Biochimica et Biophysica Acta (BBA)-Molecular and Cell Biology of Lipids*, 1862(12), 1606-1617.

Yang, M. (2013, March 4). Triple Negative Breast Cancer. Presented at: *UCSF East Bay Surgery, Grand Rounds*; Oakland, CA.

- summary of background and current research, discussion of current controversies

Yang, M. (2012, May 31). An Introduction to Goal Directed Therapy. Presented at: *UCSF East Bay Surgery, Grand Rounds*; Oakland, CA.

- background on development and most current recommendations based on *Surviving Sepsis 2012* guidelines

Robert C. Carl

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CAREER SUMMARY

Comprehensive physical therapy experience with the ability to direct, administer, and evaluate organizational operations in accordance with company goals and objectives. Proven therapeutic strengths in manual therapy, sport training, ASTYM application and evidence-based practice. Proven business experience in private practice, contract negotiations, strategic planning, marketing and sales in the orthopedic and sports therapy industry. Excellent interpersonal and communication skills with exceptional experience in problem solving, leadership, and team building.

PROFESSIONAL EXPERIENCE

Concentra Urgent Care & Physical Therapy Center Therapy Director, Austin, TX	May 2011 - present
ORPT /MBI Industrial Medicine Clinic Director, Casa Grande, AZ	Jun 2009 – Apr 2011
Quality Staffing PRN/Contract PT, Phoenix AZ	Feb 2009 – Apr 2011
ARIZONA ORTHOPEDIC ASSOCIATES Director of Rehabilitation, Phoenix AZ	Jun 2008 - Feb 2009
SPOONER PHYSICAL THERAPY Scottsdale, AZ Director of Rehabilitation, Goodyear Clinic, Goodyear, AZ Director of Rehabilitation, ASU Clinic, Tempe, AZ	Oct 2005-Jun 2008
PHYSICAL THERAPY AND HAND CENTERS Phoenix, AZ Regional Director of Rehabilitation, Chandler Clinic	Jul 2002-Sep 2005
CHANDLER ORTHOPEDIC & SPORTS THERAPY Chandler, AZ Director of Rehabilitation, Owner	Sep 1992-Jul 2002
PHYSICIAN'S PHYSICAL THERAPY SERVICES Phoenix, AZ Director - Owner	Jun 1992-May 1995
ARIZONA STATE UNIVERSITY Tempe, AZ Interim Director of Sports Medicine/D.O.R. (Jul 1991-June 1992) Director of Rehabilitation (Jul 1989-Jun1991)	Jul 1989-Jun 1992
LODI PHYSICAL THERAPY Lodi, CA Associate Physical Therapist	Feb 1989-Jul 1998
ARPTA, INC Los Gatos, CA Associate Physical Therapist	Aug 1985-Feb 1989

EDUCATION

Bachelor of Science in Physical Therapy Northern Arizona University 1985

Master of Science in Physical Therapy/Sports Therapy University of Illinois 1983

Bachelor of Science, Health Science Arizona State University 1981

CERTIFICATIONS

ASTYM System Certified Performance Dynamics Sep 2006-present

SEMINARS/CONFERENCES

March 2007 Total Motion Release; A Different Approach to Pain Control, Austin TX.

February 2007 8th Annual Evidence Based Practice Conference ;Translating Research into Best Practice, Phoenix AZ.

January 2007 AZ Physical Therapy Association; Ortho Update, Barbara Stevens, Phoenix AZ.

September 2006 ASTYM System: Lower Extremity, Pelvis and Lumbar Spine, Tempe, AZ.

September 2006 ASTYM System: Upper Extremity and Shoulder Girdle, Tempe AZ.

May 2006 AZ Physical Therapy Association Spring Conference; Shirley Sharmann, Phoenix AZ.

April 2004 Evaluation & Treatment of the Upper & Lower Extremity Core: Sports Specific Rehabilitation, Robert Donatelli, PhD, PT, OCS – San Diego, CA

August 2003 Closed Kinetic Chain Exercise – Evidence-Based Strategies Ellenbecker and Davies, NAU High Altitude Lecture Series – Flagstaff, AZ

June 2003 Practical Applications in Sports Medicine: The Sports Clinic – Palm Springs, CA

December 2002 Australian Approach to Lower Extremity Evaluation and Treatment Manual Therapy Educational Concepts - Escondido, CA

August 2002 Patellofemoral Conservative Concepts Terry R. Malone EdD, PT, ATC – Flagstaff, AZ

March 2001 Core Balance and Upper Extremity Dysfunction Rocky Mountain Athletic Trainers Assoc. – Tucson, AZ

February 2001 Building the Athletic Trainer-Physician Relationship AZATA Winter Symposium – Phoenix, AZ

November 2000 Evaluating the Golfer, Cheryl Hodges, P.T. - Tempe, AZ

July 2000 Core Stability and Dysfunction. Thomas McPoil, PhD, P.T., A.T., C. and Derek Stevens, DPT - Flagstaff, AZ

August 1999 Strength Training - CSCS Preparation. NAU High Altitude Series. Fahrenbacht, P.T. and Forden, PhD, P.T. - Flagstaff, AZ

April 1999 Common Hand and Wrist Injuries in Athletes, James Buchene, M.D.

April 1998 Annual Physician's Seminar - "The Throwing Athlete", St. Joseph's Hospital Center for Sports Medicine - Phoenix, AZ

January 1998 The Swing Reaction System, Neil Chasson - Phoenix, AZ

August 1997 Introduction to McKenzie Concepts. Gregory Silva - Flagstaff, AZ.

Note: Complete Vitae Available Upon Request.

American Physical Therapy Association

MEMBERSHIPS

Available Upon Request

REFERENCES

Information Security Policy



Number	IT101
Policy Owner	Information Security
Approved By	Chief Information Officer

Effective Date	12.31.2011
Last Revision Date	07.18.2019
Page	1 of 6

PURPOSE

Select Medical is concerned about the security of the Information processed and maintained on any computing device used throughout the Company. Information is a critical Company asset and as such must be protected from misuse, improper access, and delays in processing. It is imperative that the following policy be implemented and enforced to ensure the confidentiality, integrity, and availability of Company Information.

Select Medical Information must be protected in a manner commensurate with its sensitivity, value and critical nature. Security measures must be employed regardless of the medium on which Information is stored (i.e., paper, PCs, mobile devices, CDs, tapes, etc.), the systems which process it (i.e., PCs, networks, voice mail systems, etc.), or the methods by which it is moved (i.e., electronic mail, paper, face-to-face conversation, etc.). Such protection includes restricting access to Information based on the need-to-know.

SCOPE

This document applies to Select Medical, its subsidiaries and affiliated companies and all personnel accessing Company Property.

RESPONSIBILITY

Supervisors and managers are responsible for keeping all Workforce members informed of this policy. All Workforce members will be informed of this policy through Compliance training and new-hire orientation and will be required to acknowledge and abide by the policy.

DEFINITIONS

Company: Select Medical and its subsidiaries, affiliates, and joint venture entities managed by Select Medical.

Company Property: All right, title and interest in or to the Hardware, Software, Information, or Data owned, leased, or licensed by the Company.

Corporate Confidentiality Statement (must be used verbatim): Note: The information contained in this message may be privileged and confidential and protected from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have

received this communication in error, please notify us immediately by replying to the message and deleting it from your computer. Thank you.

Data: Raw, unorganized facts that may be captured, stored, processed, and/or transmitted.

Hardware: All equipment, machinery, tapes, diskettes, or other tangible objects used in the capture, storage, processing, or transmission of Information and Data, including, but not limited to, terminals, personal computers, mobile devices, medical devices, tape or disk drives, monitors, printers, modems or other peripheral equipment, such as disks, diskettes, external hard drives, flash drives, or tapes.

Information: All processed, organized, structured, and/or contextualized Data that may be captured, stored, processed, or transmitted.

Owner of Information: The individual or entity who has a vested interest in, who has been given the authority to allow access to, and who has the responsibility of maintaining the integrity of the Information.

Password: A control word consisting of a minimum of 8 alphanumeric characters with an expiration interval of no more than 90 days, known only to the owner of a UserID. The Password is used to restrict the use of the UserID to a specific individual or, access to Company resources. A Password can also be referred to as a "passphrase."

Software: All computer programs, applications, operating systems, languages, commands, or utilities used in the storage, processing, retrieval, or transmission of Information and Data.

System Fault: An abnormal condition or defect at the component, equipment or sub-system level which may lead to a failure.

UserID: The unique identifier, protected by a changeable Password, which identifies each computer, application, and/or system user.

Workforce: Employees of Select Medical and its subsidiaries, affiliates or entities it manages or controls, volunteers, students and trainees, agency staff, vendors, consultants, contract staff and others whose work performance is under the direct control of Select Medical or its subsidiaries, affiliates or entities it manages or controls.

POLICY

It is the policy of the Company that:

- A. All Information and applications that process Data (which include programs making up operating systems) are Company Property. The Company forbids either the Information or the Software to be given to or viewed by anyone not employed by the Company.

Exceptions can be made if the operating manager of the department responsible for the Information or Software gives prior approval.

- B. Unless for an approved business process, no Information, Data, or Software shall be downloaded, transferred or otherwise made available to non-Company Hardware or any person who is not a Workforce member without prior permission from the Information Security Department through the Workforce members immediate supervisor and senior leadership.
- C. At minimum, the following steps shall be taken to protect Company Information:
 - 1. Control and limit physical access to areas containing Information and/or Data processing resources, to essential personnel.
 - 2. Provide only the level of access necessary (READ, MODIFY and or DELETE) to those Workforce members with the need to use the Information.
 - 3. Provide necessary procedures to ensure that the transferal or termination of an individual's access is in accordance with their roles and responsibilities within the Company.
 - 4. Provide necessary tools to monitor and enforce security policies.
 - 5. Implement and maintain documented procedures to impede or prevent Workforce members of the Company or third parties from tampering with or misusing Information.
- D. All Company Property shall remain the property of the Company, regardless of its origin, including, but not limited to, any Software or Data developed by Workforce members for the Company or using Company Property. The Workforce member hereby assigns to the Company the entire right, title, and interest in and to any Software or Data developed by the Workforce member for the Company, and shall execute any assignments or other documents necessary to effect such assignments. The Workforce member agrees that any Software or Data developed by the Workforce member for the Company or using Company Property shall be deemed a "work made for hire".
- E. The Workforce member shall not load or otherwise transfer any Information or Data to any Company Property without prior permission from the Information Security Department unless for an approved business process.
- F. No electronic devices connected to Company Property, including but not limited to dial-up, VPN, or SSL connections from remote locations, shall be left unattended while signed on unless Password protected. Each Workforce member must ensure that remote connections to Company assets are logged off when not in use and not left unattended unless Password protected. All remote connections should require the user to enter a Password to gain access, and should not make use of any type of feature that would bypass this requirement unless a feature is specifically approved by the Chief Information Officer or Security Officer.

- G. Connecting any device not issued by the Information Services department to any Company equipment (workstations, servers, tablets, etc.), even for the purposes of providing power, is prohibited, unless authorized by the Information Security department.
- H. Remote and/or local area network layer connections to the Company internal network resources are only permitted from Hardware owned by the Company, unless authorized by the Information Security department.
- I. While using Company Property, connections to the Internet must not be left unattended, and Internet browsers should be closed when not in use
- J. The Workforce member shall not use or install any personal locks on any Hardware, safes, or storage cabinets for Software, or on any adjacent office equipment. The Company reserves the right to inspect the Workforce member's work area and remove, by any means, any personal locks found to be installed in violation of this policy.
- K. The Workforce member shall be solely responsible for any computer activity conducted under the Workforce member's UserID, and shall not disclose his/her UserID and associated Password to anyone, unless authorized beforehand by a member of the Information Security department. The Workforce member shall not in any way attempt to discover the Password of any other Workforce member.
- L. The Workforce member shall not use any Company Property, in whole or in part, for personal reasons, unless authorized by the Workforce member's immediate supervisor.
- M. Testing of security systems is prohibited without approval of the Chief Information Officer or Security Officer. Disclosing, capturing, altering, or destroying Information that relates to or creates security exposures is prohibited. All security exposures must be disclosed to the Security Officer or Chief Information Officer as soon as possible. Additionally, users are prohibited from disclosing, changing, or disabling any audit features without the approval of the Information Services department.
- N. Workforce members must report all System Faults with Company owned assets or systems to the Help Desk.
- O. The Workforce member shall not use any Company Property to gain unauthorized access to any Software or Data, whether the property of the Company or a third party.
- P. The Workforce member shall not unduly influence or attempt to influence the Company to purchase, lease, or license any Hardware, Software, or Data from a third party vendor with which the Workforce member has had prior dealings.
- Q. The Workforce members should not expect privacy with respect to any of their use or access of Company Property. The Company reserves the right and has the legal authority

to review any data files, messages, or communications sent, received, or stored on Company Property. Workforce member will adhere to applicable laws and industry standards while utilizing Company equipment and while on Company Property.

- R. The environments containing Company Information and Data processing resources shall be adequately protected by using appropriate procedures and technology. Some examples of these would be locked doors or cabinets, fire alarms, suppression devices, and emergency power supplies.
- S. All departments that process and maintain Company Information shall ensure that a documented contingency plan is developed to enable the continued availability of important or critical Information in the event of an extended emergency.
- T. Unless it has specifically been designated as public, all Company internal Information must be protected from disclosure to third parties. Third parties may be given access to Company internal Information only when demonstrable need-to-know exists, when a Company contractual agreement has been signed, and when such a disclosure has been expressly authorized by the relevant Company Owner of Information. If sensitive Information is lost, or disclosed to unauthorized parties, or is suspected of being lost or disclosed to unauthorized parties, the Information Security department and Compliance department must be notified immediately.
- U. All Workforce members who secure Company Property with Passwords or encryption shall turn over the Passwords or decryption keys to the Information Security department upon separation from the Company.
- V. If remote access to Company's internal network resources is granted, the Workforce member must maintain a work environment that meets security and confidentiality requirements for PHI, financial information, and any proprietary Company Information as defined by Company's policies and procedures as well as established law. Workforce members must not compromise the confidentiality or security of Information due to remote computer access. Workforce members must ensure that confidential Information in any form cannot be accessed and/or viewed by any unauthorized person. It is the Workforce member's responsibility to be aware of their surroundings when viewing sensitive Information in possible public areas.
- W. Breaches in the use and handling of sensitive Information such as PHI, PII, PCI, etc. or technology, whether intended or unintended, will be subject to disciplinary action up to and including termination, in accordance with Company's Human Resources policies, procedures and Code of Conduct.
- X. The Workforce member shall use any Software purchased, leased, or licensed from third party vendors strictly in accordance with the license agreement and copyright statements for such Software. The Workforce member shall not copy, download or upload any such

Software without the prior approval of the Information Security department, and shall not under any circumstances modify any such Software.

- Y. The Workforce member acknowledges that any action taken by the Workforce member in violation of this policy may subject both the Workforce member and the Company to criminal and civil liability. In the event that any suit, claim, or demand is asserted against the Company which arises out of the Workforce member's actions in violation of this policy, the Workforce member shall indemnify, defend, and hold harmless the Company from and against all liability, cost, or expense, including attorney's fees. The indemnity contained herein shall survive the expiration or termination of the Workforce member's employment with the Company.

The Workforce member acknowledges that any violation of the above rules and procedures may subject the Workforce member to disciplinary action, including, but not limited to, termination of the Workforce member's employment and civil and criminal proceedings. In the event that the Workforce member's employment is terminated, the Company shall retain all legal or equitable remedies against the Workforce member, and such remedies shall be cumulative and not exclusive.



Encryption Policy

Number	IT106
Policy Owner	Information Security
Approved By	Chief Information Officer

Effective Date	03.23.2016
Last Revision Date	11.12.2018
Page	1 of 3

PURPOSE

The purpose of this policy is to define the standards to which the Company adheres to when encrypting electronic communications and information resources.

SCOPE

This policy applies to Select Medical and its subsidiaries and affiliated companies.

RESPONSIBILITY

The Information Security department is responsible for the implementation and enforcement of this policy. Workforce members are responsible for adhering to the guidelines specified within this policy.

DEFINITIONS

Certificate Authority: An entity that issues digital certificates accrediting the ownership of a public key by the named subject of the certificate.

Company: Select Medical and its subsidiaries, affiliates, and joint venture entities managed by Select Medical Corporation.

Company-Owned Mobile Device: Any Mobile Device issued or owned by the Company.

Encryption: Encryption is the conversion of electronic data into another form, which cannot be easily understood by anyone except authorized parties.

File Encryption: The encryption of an individual file.

Full Disk Encryption: The encryption of all sectors of a storage device including removable media, whether hard disk drive, solid state drive, or other storage medium, to include unused and empty sectors.

Information: All processed, organized, structured, and/or contextualized data that may be captured, stored, processed, or transmitted.

Removable Media: Physical hardware that is designed to be removed from a host system, including but not limited to tape, external disk drives, and external memory devices.

Workstation: A physical desktop, laptop, tablet, or personal computing device (PC).

Workforce: Employees of Select Medical and its subsidiaries, affiliates or entities it manages or controls, volunteers, students and trainees, agency staff, vendors, consultants, contract staff and others whose work performance is under the direct control of Select Medical or its subsidiaries, affiliates or entities it manages or controls.

POLICY

Encryption Standard

Company uses Federal Information Processing Standard (FIPS) approved algorithms for encryption of data-at-rest and data-in-motion. All encryption methodology changes are approved by the Vice President of Information Security or Chief Information Officer.

Data-in-Motion

All sensitive data leaving the internal LAN/WAN must be encrypted. Encryption of sensitive data communications within the internal LAN/WAN is not required. Supported methods of encrypting data-in-motion include, but are not limited to:

- Transport Layer Security (TLS).
- Secure Socket Layer (SSL).
- Secure Shell (SSH).
- WIFI Protected Access (WPA).
- Virtual Private Networks (VPN).

Encryption for data-in-motion is required for, but is not limited to, the following scenarios:

- Connections to Company WIFI.
- Remote Access to Company internal resources including Workstations and Information.
- PHI, PII, or other sensitive data transferred/communicated with destinations outside of Company network.

Data-at-Rest

Full Disk Encryption is required for, but is not limited to, the following devices:

- All Company Workstations with the ability to store data.
- Removable media containing sensitive data approved by the Information Security department.
- All Company-Owned Mobile Devices.
- Back-up tapes.

If a hard disk cannot be encrypted for technical reasons, the asset must be reported to the Information Security department. Any exemptions to this rule must be approved by the Vice President of Information Security or Chief Information Officer

Enforcement

The Company ensures that devices and media are encrypted through one, or a combination, of the following measures:

- Automated policy enforcement.
- Automated inventory system.
- Compliance monitoring.
- Manual record keeping.

Key Management

Cryptographic keys will adhere to the following requirements:

- Cryptographic keys and public key certificates are generated within an issuing system or Certificate Authority.
- Keys are stored in centralized locations and must be secured by authentication (username and password).
- Access to stored keys is restricted to authorized individuals.
- Keys may be revoked, withdrawn, or deactivated when they have reached their natural date of expiry, they have been compromised, or when they are no longer needed for continuation of business processes (i.e. when an individual leaves the company or a device has been decommissioned).

The process for recovering encrypted Information in the event of lost, compromised, or damaged keys will follow the steps required by the encrypted repository in question.

A violation of this policy or of the standards, procedures or guidelines established in support of this policy may be considered grounds for disciplinary actions up to and including termination of employment.



Backup and Retention Policy

Number	IT111
Policy Owner	Information Security
Approved By	Chief Information Officer

Effective Date	11.26.2014
Last Revision Date	03.04.2019
Page	1 of 3

PURPOSE

The purpose of this policy is to establish the Company's requirements for secure Backup and Retention of Electronic Data.

SCOPE

This policy applies to Select Medical and its subsidiaries and affiliated companies.

RESPONSIBILITY

The Information Security department is responsible for establishing corporate security requirements for the secure Backup and Retention of electronic data. The Information Services (IS) department is responsible for ensuring that Backup and Retention practices meet the defined security requirements, and that all Backup and Retention activities are in alignment with the business requirements as determined by the business, the Governance, Risk and Compliance (GRC) team, and the appropriate IS support team(s). In all cases where Backup services are provided by either the Company or by Company vendors, IS Management is responsible for enforcing this policy.

DEFINITIONS

Backup: The act of creating and saving a retrievable exact copy of Electronic Data to a mass storage device for the purposes of preventing loss and facilitating recovery, or may refer to a single Electronic Data copy.

Company: Select Medical and its subsidiaries, affiliates, and joint venture entities managed by Select Medical Corporation.

Daily Backup: A Backup or series of Backups that is intended to represent, be reassembled into, or be a component of a full copy of the Electronic Data for an application or service taken on a daily or near-daily interval. The purpose of this backup is for use as a recovery source in a Disaster Recovery event, or as a source for near term restore.

Data: Raw, unorganized facts that may be captured, stored, processed, and/or transmitted.

Datacenter: A facility centrally or regionally located, specifically purposed to house the Information Technology (IT) infrastructure required to run Company applications and services. A Datacenter is seen as enterprise-wide or significantly wide in the scope of the applications it

supports as compared to a server room or network room which would be localized and serve a single site-specific purpose.

Disaster Recovery (DR): Process of attempting to return the business to a state of normal operations either at an interim minimal survival level and/or re-establishing full-scale operations.

Electronic Data: A general term for all data and metadata that is recorded or transmitted electronically.

Governance, Risk and Compliance (GRC): Governance, Risk and Compliance (GRC) is the internal Information Security team that provides comprehensive IT risk assessments and compliance programs that empower risk based strategy and minimizes risk exposure of IT operations while simultaneously enabling business objectives.

Monthly Backup: A Backup or series of Backups that is intended to represent, be reassembled into, or be a component of a full copy of the Electronic Data for an application or service either taken on a monthly interval, or selected once monthly from existing Daily Backups. The purpose of this backup is primarily for long term archival, and can be used as a recovery source in a Disaster Recovery event.

Removable Media: Physical hardware that is designed to be removed from a host system, including but not limited to tape, external disk drives, and external memory devices.

Retention: The act of storing and maintaining copies of Electronic Data in a retrievable form, for any period of time beyond initial Backup.

POLICY

It is the Policy of the Company that:

1. Electronic Data stored in the Datacenter must be backed up using tools, procedures, software and hardware in such a way that will meet Disaster Recovery (DR) requirements for the Data, provide near-term restore as required by the business, and meet all security requirements defined for Backup of Electronic Data.
2. Backups must be identifiable in such a way that recovery or restore to an available point in time is easily determined. The movement and location of all backup Removable Media must be continuously updated and remain current.
3. Removable Media for Backups must be physically stored in secure locations according to the requirements of the *IT105 Corporate Physical Security Policy*. All storage locations must be approved by the Chief Information Officer.
4. Access to Backups is restricted to IS department staff based on job function. Access to Backups may be granted to contracted third-parties for various purposes related to Removable Media handling, Disaster Recovery testing, data erasure, media conversion, data migration, or hardware upgrades.

5. Recoverability of Backups must be tested consistent with the Company's Disaster Recovery plan(s).
6. All Backups must be on Company owned assets, on assets provided by a Backup services vendor specifically identified to hold backups, or on Data storage provided as a Company approved vendor cloud storage offering. No Backups may be placed on employee owned devices or employee contracted cloud storage.
7. All cloud-based backup services provided by Company chosen vendors must be in alignment with all applicable Company policies.
8. All Backups will be retained in accordance with Compliance Policy *C09-A Document Retention Schedule* and HIPAA Policy *H22-A Record Retention Schedule*. Backups will be stored in an offsite storage location as outlined by *IT105 Corporate Physical Security Policy* and approved by the Chief Information Officer. Backups must be sent to the offsite storage location as close to the completion of the Backup as is reasonably possible based on Backup methodology used.
9. Backups must be encrypted according to the requirements of the *IT106 Encryption Policy*.
10. Exceptions to this policy must be reviewed and approved by the Chief Information Officer.

A violation of this policy or of the standards, procedures or guidelines established in support of this policy may be considered grounds for disciplinary actions up to and including termination of employment.

REFERENCES AND RELATED DOCUMENTS

C09-A-Document Retention Schedule
H22-A-Record Retention Schedule
IT105-Corporate Physical Security Policy
IT106-Encryption Policy
IT119-Disaster Recovery Policy
Select Medical Disaster Recovery Plan
Concentra IS Disaster Recovery Plan

Data Sanitization Policy



Number	IT112
Policy Owner	Information Security
Approved By	Chief Information Officer

Effective Date	11.24.2014
Last Revision Date	04.23.2019
Page	1 of 2

PURPOSE

This policy establishes the Company's requirements to ensure sensitive data is protected in a manner commensurate with its sensitivity, value and critical nature by ways of secure data disposal and sanitization of Company owned assets.

SCOPE

This policy applies to Select Medical and its subsidiaries and affiliated companies.

RESPONSIBILITY

It is the responsibility of all Workforce members to ensure that all Information Technology (IT) assets are sent to the Information Services Asset Management team for disposal. The Information Services Asset Management department is responsible for ensuring the secure disposal of IT assets.

DEFINITIONS

Company: Select Medical and its subsidiaries, affiliates, and joint venture entities managed by Select Medical Corporation.

Data: Raw, unorganized facts that may be captured, stored, processed, and/or transmitted.

Data sanitization: Process of permanently removing and/or rendering unrecoverable, data stored on Company-owned assets – including but not limited to computers, laptops, backup tapes, Removable Media and/or disks.

Encryption: The conversion of electronic data into another form, which cannot be easily understood by anyone except authorized parties.

Removable Media: Physical hardware that is designed to be removed from a host system, including but not limited to tape, external disk drives, and external memory devices.

Workforce: Employees of Select Medical and its subsidiaries, affiliates or entities it manages or controls, volunteers, students and trainees, agency staff, vendors, consultants, contract staff and others whose work performance is under the direct control of Select Medical or its subsidiaries, affiliates or entities it manages or controls.

POLICY

It is the Policy of the Company that:

1. Company assets containing stored data must be sanitized if the asset has been replaced, the asset is no longer required for business use, the asset is to be repurposed for use within the Company or if the asset has reached end of life.
2. All Company assets must be returned to the Asset Management team for sanitization in accordance with *IT117 IT Asset Return and Management Policy*.
3. Company assets must be sanitized prior to any sale or donation upon approval of the Vice President of Information Technology.
4. Sanitized assets must not contain usable residual data, and the data purged from the device must not be recoverable.
5. All assets must have Company identifying marks removed prior to disposal.
6. All assets must be sanitized prior to being repurposed or discarded in accordance with guidelines outlined in NIST 800-88, rev 1 *Special Publication Guidelines for the Sanitization of Media*.
7. Company will conform to guidelines outlined in HIPAA policy *H04-A-Safeguarding Protected Health Information (PHI)* and HIPAA Security Rule: 45 CFR 164.310(d)(2)(i) and (ii) in regards to sanitizing assets involving PHI data.
8. Company assets must be sanitized by authorized members of the Information Services department or authorized third parties approved by the Information Services and Information Security departments.
9. Authorized third parties are required to provide a certificate of data destruction and a certificate of proper disposal in accordance with the U.S. EPA.
10. Unauthorized disposal of Company assets is strictly prohibited.
11. Assets must be encrypted in adherence with the *IT106-Encryption Policy*.
12. Exceptions to this policy must be approved by Information Security department management.

A violation of this policy or of the standards, procedures or guidelines established in support of this policy may be considered grounds for disciplinary actions up to and including termination of employment.

REFERENCES AND RELATED DOCUMENTS

H04-A-Safeguarding Protected Health Information (PHI)

IT106-Encryption Policy

IT117 IT Asset Return and Management Policy

NIST 800-88, rev 1 Special Publication Guidelines for the Sanitization of Media

HIPAA Security Rule: 45 CFR 164.310(d)(2)(i) and (ii)

Business Continuity Policy



Number	IT118
Policy Owner	Information Security
Approved By	Chief Information Officer

Effective Date	10.04.2018
Last Revision Date	11.12.2018
Page	1 of 3

PURPOSE

The purpose of this policy is to ensure that a Business Continuity Plan(s) and a Business Unit Plan(s) are maintained in the event that the Company suffers a major Business Disruption Event.

SCOPE

This policy applies to Select Medical and its subsidiaries and affiliated companies.

RESPONSIBILITY

The Information Security department is responsible for ensuring the implementation and enforcement of this policy. The Business Continuity Team will supply the resources needed and collaborate with other subject matter experts as necessary to appropriately address business continuity issues. It is the responsibility of all Workforce members to notify the Business Continuity Team of any Business Disruption Events defined in this policy.

DEFINITIONS

Business Continuity Plan (BCP): A comprehensive, proactive plan supporting the continuous operation of the critical business functions that may include, or depend upon, lower level plans which support specific functions, departments, units, or areas of the business.

Business Continuity Team: Workforce members responsible for managing the response to and recovery from a Business Disruption Event.

Business Disruption Event: An event of any unplanned cause which may threaten the operations, Workforce, clients, brand image or reputation of the Company.

Company: Select Medical and its subsidiaries, affiliates, and joint venture entities managed by Select Medical Corporation.

Corporate Offices: A building or group of buildings that serve as main base of operations for the Company's executive, managerial, Human Resources, Communications, Operations, Procurement, Finance, Legal and Accounting, IS Services and other relevant departments that provide enterprise-wide support.

Data Center: A centrally located facility that supports computing services and back-end Information Technology (IT) systems for the purpose of collecting, storing, processing, distributing or allowing access to large amounts of Company data.

I.S. Help Desk: A team of dedicated resources who provide end users with information and support related to the Company's IT systems. Also known as the I.S. Solution Center.

Recovery Point Objective (RPO): The maximum age of data that can be lost as the result of a Disaster Event, starting from the time of the event and looking backwards toward the most recent recoverable copy of that data.

Recovery Time Objective (RTO): The maximum tolerable length of time that an application can be down during a Disaster Event, before operation of the application is restored.

Workforce: Employees of Select Medical and its subsidiaries, affiliates or entities it manages or controls, volunteers, students and trainees, agency staff, vendors, consultants, contract staff and others whose work performance is under the direct control of Select Medical or its subsidiaries, affiliates or entities it manages or controls.

POLICY

The Company will establish and maintain a Business Continuity Plan(s) and associated Business Unit Plan(s) to respond to and address Business Disruption Events which includes, but is not limited to, weather-related events, significant property loss or damage, cyber incidents, loss of utilities, and man-made disasters. The Company will take all reasonable and appropriate steps necessary to protect its business, reputation, workforce members, and the tangible (property) and intangible (intellectual property) resources used to execute key business processes.

As part of the Business Continuity Plan(s), the Business Unit Plan(s) will contain, at a minimum, the following information:

- Identification of critical business functions and processes.
- Recovery Time Objectives (RTO) and Recovery Point Objectives (RPO).
- Capacity planning.
- Roles and responsibilities.

All Business Disruption Events must be reported as soon as practicable to the Business Continuity Team. The following are examples of methods for reporting or becoming aware of a Business Disruption Event:

- Contact the I.S. Help Desk or Solution Center.
- Phone call, email or other form of electronic communication directly to a member of the Information Services leadership team.
- Notification from a third-party such as a business associate, vendor, fire or police organization, or other emergency management agency.

The Business Continuity Team will coordinate with Information Security to respond to scenarios that lead to one of the following situations:

- The Corporate Offices are non-operational, but the Data Center is operational.
- The Corporate Offices are operational, but the Data Center is non-operational.
- Both the Corporate Offices and Data Center are non-operational.
- Inpatient and/or Outpatient facilities are not able to provide services.
- Identified critical third-parties are not available.

The Business Continuity Team shall test the Business Continuity Plan(s) and other related documents annually via plan walk-throughs, tabletop exercises, simulations or other comprehensive exercises to determine the Business Continuity Plan(s) effectiveness and document all results.

The Business Continuity plan(s) and other related documents are to be kept up-to-date and, at a minimum, will be reviewed on an annual basis.

REFERENCES AND RELATED DOCUMENTS

Select Medical Business Continuity Plan
Concentra Business Continuity Plan
Corporate Business Unit Continuity Plans
Inpatient Division Continuity of Operations Plan
Outpatient Division Continuity of Operations Plan



Policy: Disaster Recovery Policy

Number: IT119

Approved By: Chief Information Officer

Effective Date: 01.22.2016

Revised Date: 04.02.2018

Page: 1 of 3

PURPOSE

The purpose of this policy is to define the Company's Disaster Recovery activities regarding the high-level process to recover IT systems, applications, and data from any type of disaster that causes a major business disruption.

SCOPE

This policy applies to Select Medical and its subsidiaries and affiliated companies.

RESPONSIBILITY

The Information Services technical teams are responsible for writing the restoration procedures for applications and services. The business and application support teams are responsible for defining service levels in conjunction with the annual Business Continuity Plan(s) and update process as approved by the respective business units. Annual testing of the Disaster Recovery plan(s) is the responsibility of the Disaster Recovery Coordinator and will be a collaborative effort by all applicable support teams.

DEFINITIONS

Application Availability and Recovery Definition (AARD): The Recovery Point Objective (RPO) and Recovery Time Objective (RTO) for each application not defined in the Business Continuity Plan(s). This is the maximum tolerable outage and/or data loss a business unit can afford for their respective application(s).

Authorization List: List of Company employees approved by the CIO on record with the Disaster Recovery provider(s) who can declare a disaster event.

Availability Assurance Testing: The periodic testing of the capability, processes, procedures and plans to enable the restoration of applications and services with the prescribed RPO's and RTO's to ensure compliance with the Disaster Recovery plan(s) and Business Continuity Plan(s) objectives.

Business Continuity Plan: A comprehensive, proactive plan supporting the continuous operation of the critical business functions that may include, or depend upon, lower level plans, which support specific functions, departments, units, or areas of the business.

Company: Select Medical and its subsidiaries, affiliates, and joint venture entities controlled by Select Medical Corporation.

Disaster Event: An event of any unplanned cause that results in the loss of application access and/or data to an extent that an alternative site or alternative infrastructure must be utilized to provide access to the unavailable application(s) or data.

Disaster Recovery: Process of attempting to return the business to a state of normal operations either at an interim minimal survival level and/or re-establishing full-scale operations.

Disaster Recovery Coordinator: Workforce member that coordinates the resources needed to recover the enterprise's systems and applications following a disaster. The Disaster Recovery Coordinator is also responsible for the annual testing of the Disaster Recovery plan(s).

Recovery Point Objective (RPO): The maximum age of data that can be lost as the result of a Disaster Event, starting from the time of the event and looking backwards toward the most recent recoverable copy of that data.

Recovery Site: A physical location whose purpose is to house IT infrastructure that will be used to recover applications or services when a disaster event occurs. A Recovery Site can be a Company facility or a vendor-owned facility.

Recovery Time Objective (RTO): The maximum tolerable length of time that an application can be down during a Disaster Event, before operation of the application is restored.

Workforce: Employees of Select Medical and its subsidiaries, affiliates or entities it manages or controls, volunteers, students and trainees, agency staff, vendors, consultants, contract staff and others whose work performance is under the direct control of Select Medical or its subsidiaries, affiliates or entities it manages or controls.

POLICY

It is the policy of the Company that:

- A. The Company shall develop and maintain a comprehensive Disaster Recovery plan(s) for all applications as outlined in the Company's Business Continuity Plan(s) to respond to Disaster Events.
- B. Any applications that are not explicitly listed in the Business Continuity Plan(s) will fall into a default Application Availability and Recovery Definition.
 1. The default Application Availability and Recovery Definition will be defined in the Disaster Recovery plan(s), and will include backup and recovery methodology, RTO's, RPO's, and any other key characteristics.
 2. The default Application Availability and Recovery Definition will be updated and maintained by the Disaster Recovery Coordinator in conjunction with the annual review of the Business Continuity Plan(s).
- C. The Disaster Recovery plan(s) will contain, at a minimum, the following information:
 1. Authorization List.
 2. Identification of Disaster Recovery teams, defining their roles and responsibilities.
 3. Requirements for planning and execution of Availability Assurance Testing.
 4. Strategies for responding to specific technology incidents, as defined in the Business Continuity Plan(s).
 5. Address critical technology elements, including systems, networks, databases and data, in accordance with key business activities.
 6. Default Application Availability and Recovery Definition

- D. The Disaster Recovery plan(s) will establish one or more Recovery Sites. The Recovery Sites will serve one or more of the following:
 - 1. High availability site provides additional equipment for critical applications and services by providing appropriate replication or service redundancy; serving as a failover option to minimize downtime.
 - 2. Cold sites contain predetermined hardware and software configurations that are kept offline and can be brought online for testing and events in an on-demand, as-needed basis.
- E. Disaster Recovery plan(s) shall be periodically tested to ensure the systems, networks, databases and other infrastructure elements can be recovered or reestablished to an acceptable and adequate state in Disaster Events and that Workforce members understand how the plan is to be executed as well as their roles and responsibilities.
- F. The Disaster Recovery plan(s) and other related documents are to be kept up-to-date and, at a minimum, will be reviewed on an annual basis.

A violation of this policy or of the standards, procedures or guidelines established in support of this policy may be considered grounds for disciplinary actions up to and including termination of employment.

REFERENCES

Select Medical Disaster Recovery Plan
Concentra IS Disaster Recovery Plan
Select Medical Business Continuity Plan
Concentra Business Continuity Plan

SECTION 0640 – HIPAA BUSINESS ASSOCIATE AGREEMENT
CITY OF AUSTIN PURCHASING OFFICE
SOLICITATION NUMBER: RFQS 1500 EAD4003

This Agreement is made and entered into between the City of Austin ("City") and the person or entity identified in the signature block below (the "Business Associate"), and is made with reference to the following facts:

- i. The Program is subject to the privacy and other requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA");
- ii. Under the HIPAA Rules (defined below), the City is required to enter into a written agreement with the Business Associate under the terms and conditions provided below; and
- iii. The parties wish to enter into this Agreement in order to comply with the HIPAA Rules (defined below), and to safeguard Protected Health Information (defined below) appropriately.

Therefore, in consideration of their mutual undertakings set out in this Agreement, and for other good and valuable consideration, the parties agree to the following:

1. Definitions. As used in this Agreement:

- A. **"HIPAA Rules"** and/or **"HIPAA"** shall mean the Privacy, Security, Breach Notification, and Enforcement Rules implementing HIPAA and set out at 45 CFR Part 160 and Part 164.
- B. **"Individually Identifiable Health Information"** shall mean information collected from an individual, including demographic information, that:
 - i. Is created or received by the City and provided to the Business Associate; and
 - ii. Relates to: (a) the past, present, or future physical or mental health or condition of an individual; (b) the provision of healthcare to an individual; or (c) the past, present, or future payment for the provision of healthcare to an individual; and
 - iii. Which identifies the individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- C. **"Protected Health Information"** shall mean Individually Identifiable Health Information that is: (i) transmitted by electronic media; (ii) maintained in any medium constituting electronic media; or (iii) transmitted or maintained in any other form or medium.
- D. **"Agent"** and **"Subcontractor"** shall mean a third party who is not an employee in the workforce of the Business Associate and who receives Protected Health Information from the Business Associate for purposes of carrying out any part of the Business Associate's responsibilities under its services agreement with the City.
- E. **"Business Associate"** shall have the same meaning as the term "business associate" set out at 45 CFR Part 160.103, and in reference to the party to this agreement, shall be the party designated as a Business Associate.

2. Permitted Uses and Disclosures of Protected Health Information by Business Associate.

- A. The Business Associate may use or disclose Protected Health Information for the following purposes only: (i) to receive and process claims for payment for eligible Program participants; (ii) to maintain claims history and patient profiles; (iii) to maintain current eligibility data on Program participants; and (iv) for the management and administration of its internal business processes that relate to its legal responsibilities and its responsibilities under the services contract between the City and the Business Associate.
- B. The Business Associate may use or disclose Protected Health Information as required by law.

SECTION 0640 – HIPAA BUSINESS ASSOCIATE AGREEMENT
CITY OF AUSTIN PURCHASING OFFICE
SOLICITATION NUMBER: RFQS 1500 EAD4003

- C. The Business Associate shall make its internal practices, books and records, including policies and procedures, relating to the use and disclosures of Protected Health Information available to the Secretary of the United States Department of Health and Human Services for purposes of determining compliance with HIPAA.
- D. Within ten (10) calendar days of receipt of a request by the City, the Business Associate shall permit any individual whose Protected Health Information is maintained by the Business Associate to have access to and to copy his or her Protected Health Information, in the format requested, unless it is not readily producible in such format, in which case it shall be produced in hard copy format. In the event any individual requests access to Protected Health Information held by the Business Associate directly from the Business Associate, the Business Associate shall, within two (2) days forward such request to the City.

3. Prohibitions on Use and Disclosure of Protected Health Information by Business Associate.

- A. The Business Associate will not use or further disclose Personal Health Information except as permitted or required by this Agreement, or as required by law.
- B. The Business Associate shall not sell Protected Health Information, including patient or enrollee lists, nor use any Protected Health Information to engage in "marketing," as that term is defined in 45 CFR Part 164.501
- C. The Business Associate shall not disclose Personal Health Information to any member of its workforce unless the Business Associate has advised such person of the Business Associate's obligations under this Agreement and of the consequences for such person and for the Business Associate of violating them.
- D. The Business Associate shall not disclose Personal Health Information to any Agent, Subcontractor or other third party unless disclosure is required by law, or unless expressly approved in advance by the City in writing. Any such disclosure shall be made in accordance with 45 CFR Parts 164.502 and 164.308, and only upon the written agreement of the Agent, Subcontractor or other third party which shall include, at a minimum:
 - i. The agreement of such Agent, Subcontractor or other third party that creates, receives, maintains, or transmits protected health information on behalf of the Business Associate agree to be bound to the same restrictions, conditions and requirements that apply to Business Associate with respect to such information;
 - ii. Reasonable assurances from such Agent, Subcontractor or other third party that Personal Health Information will be held confidential as provided in this Agreement, and only disclosed as required by law or for the purposes for which it was disclosed to such Agent, Subcontractor or other third party; and
 - iii. An agreement from such Agent, Subcontractor or other third party to immediately notify the Business Associate of any breaches of the confidentiality of Personal Health Information, to the extent it has obtained knowledge of such breach.

4. Safeguards for Protected Health Information.

- A. The Business Associate shall implement appropriate safeguards to prevent use or disclosure of Personal Health Information other than as permitted by this Agreement. The Business Associate shall provide the City with information concerning such safeguards as the City may from time to time request. Upon reasonable request, the Business Associate shall give the City access for inspection and copying to the Business Associate's facilities used for the maintenance and processing of Personal Health Information, and to its books, records, practices, policies, and procedures concerning the use and disclosure of Personal Health Information.

**SECTION 0640 – HIPAA BUSINESS ASSOCIATE AGREEMENT
CITY OF AUSTIN PURCHASING OFFICE
SOLICITATION NUMBER: RFQS 1500 EAD4003**

- B. The Business Associate and any Agent or Subcontractor shall comply with the minimum necessary requirements set forth in the HIPAA Rules when using or disclosing Personal Health Information. The Business Associate also agrees to mitigate, to the extent possible, any harmful effects of an improper use or disclosure of Personal Health Information by the Business Associate in violation of the requirements of this Agreement. The Business Associate shall make its internal practices, books, records, including policies and procedures, related to the use and disclosures of protected health information available to the Secretary of the United States Department of Health and Human Services, for purposes of determining compliance with HIPAA.
- C. The Business Associate shall maintain a record of all Personal Health Information disclosures made other than for the permitted purposes of this Agreement, including the date of disclosure, the name and, if known, the address of the recipient of the Personal Health Information, a brief description of the Personal Health Information disclosed, and the purposes of the disclosures.
- D. The Business Associate shall comply with all written directions from the City concerning:
 - i. any special limitations on the use or disclosure of Protected Health Information beyond the requirements of the HIPAA Rules;
 - ii. any changes in, or revocation of, the permission by an individual to use or disclose his or her Protected Health Information that may affect the Business Associate's use or disclosure of such information; and
 - iii. any restriction on the use or disclosure of Protected Health Information that the City has agreed to that may affect the Business Associate's use or disclosure of such information.
- E. Within ten (10) calendar days of notice by the City to the Business Associate that the City has received a request for an accounting of disclosures of Personal Health Information regarding an individual, the Business Associate shall make available to the City such information as is in the Business Associate's possession and is required for the City to make the accounting.
- F. Within five (5) business days of becoming aware of a use or disclosure of Personal Health Information in violation of this Agreement by the Business Associate, Agent or Subcontractor, the Business Associate shall report such disclosure or use in writing to the City and describe the remedial action taken or proposed to be taken with respect to such use or disclosure.
- G. The Business Associate shall make any amendment(s) to Protected Health Information in a designated record set as directed or agreed to by the City pursuant to 45 CFR Part 164.526, or take other measures as necessary to satisfy the City's obligations under 45 CFR Part 164.526.
- H. The Business Associate acknowledges that the additional requirements of the HITECH Act (Health Information Technology for Economic and Clinic Health Act enacted as part of the American Recovery and Reinvestment Act of 2009) and the Final Rule (also known as the Omnibus Rule) issued by the U.S. Department of Health and Human Services on January 25, 2013 are applicable to the Business Associate. The Business Associate further acknowledges restrictions on the sales and marketing of protected health information without the explicit authorization of the individual.
- I. To the extent the Business Associate is to carry out one of more of the City's obligations under Subpart E of 45 C.F.R. Part 164, the Business Associate will comply with the requirements of Subpart E that apply to the City in the performance of such obligations.
- J. The Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by the City except for the specific uses and disclosures set forth below:

SECTION 0640 – HIPAA BUSINESS ASSOCIATE AGREEMENT
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- i. The Business Associate may disclose protected health information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information remains confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances in which it is aware in which the confidentiality of the information has been breached.
- ii. The Business Associate may provide data aggregation services related to the health care operations of the City.

5. Term of this Agreement; Termination; Procedures upon Termination.

- A. This Agreement shall become effective upon execution by the parties, and shall be effective as of the date of the last party to sign.
- B. The term of this Agreement shall expire with the close of business on the contract expiration date.
- C. Except as provided in paragraph D, below, upon termination of this Agreement, the Business Associate shall return or destroy all Personal Health Information received from the City, or created or received by the Business Associate on behalf of the City. This provision shall also apply to Personal Health Information that is in the possession of Agents or Subcontractors of the Business Associate. The Business Associate shall retain no copies of the Personal Health Information.
- D. In the event that the Business Associate determines that returning or destroying the Personal Health Information is not feasible, the Business Associate shall provide to the City written notification of the conditions that make return or destruction infeasible. Upon agreement by the City that return or destruction of Personal Health Information is not feasible, the Business Associate shall extend the protections of this Agreement to such Personal Health Information and limit further uses and disclosures of such Personal Health Information to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains the Personal Health Information. The Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as Business Associate retains the protected health information.
- E. The Business Associate shall not use or disclosure the protected health information retained by the Business Associate other than for the purposes for which the protected health information was retained and subject to the same conditions set out in this Agreement which applied prior to Termination.
- F. Survival. The obligations of the Business Associate under this Section shall survive the termination of this Agreement.

6. Other Provisions.

- A. **Indemnification.** The Business Associate shall indemnify and hold harmless the City from and against any and all costs, liabilities, losses, damages and expenses (including, but not limited to, reasonable attorneys' fees) resulting from any claim, lawsuit or proceeding brought by a third party against the City and arising from or related to a breach or alleged breach by the Business Associate or the Business Associate's Agents or Subcontractors of the obligations referenced herein. The Business Associate's obligation to indemnify shall survive the expiration or termination of the Contract.

**SECTION 0640 – HIPAA BUSINESS ASSOCIATE AGREEMENT
CITY OF AUSTIN PURCHASING OFFICE
SOLICITATION NUMBER: RFQS 1500 EAD4003**

- B. **Remedies for Breach.** Without limiting the rights of the parties under paragraph 5, should the Business Associate breach any of its obligations under this Agreement, the City may at its option: (i) exercise its rights of access and inspection under paragraph 2, above; and/or (ii) report the breach to the Secretary of the United States Department of Health and Human Services.
- C. **Notices.** Any notice by a party required or provided for under this Agreement shall be effective upon delivery via regular or electronic mail to the other party at the following address:

To the City:	To the Business Associate:
Name: <u>Maggie Perales</u>	Name: <u>Garet MacCALLON, AS/BS Paramedic</u>
Phone: <u>512-974-1946</u>	Phone: <u>512.440.0555</u>
Fax: <u>512-974-1924</u>	Fax: <u>512.448.1113</u>
Email: <u>Maggie.perales@austintexas.gov</u>	Email: <u>mmaccallon@concentra.com</u>

- D. **Amendments.** Upon the enactment of any law or regulation affecting the use or disclosure of protected health information, or the publication of any decision of a court of the United State or State of Texas relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, the City may, by written notice to the Business Associate, amend this Agreement in such a manner as the City determines necessary to comply with such law or regulation. Notwithstanding the foregoing, if the City and Business Associate have not amended this Agreement to address a law or final regulation that becomes effective after the effective date of this Agreement and that is applicable to this Agreement, then upon the effective date of such law or regulation (or any portion thereof) this Agreement shall be amended automatically and deemed to incorporate such new or revised provisions as are necessary for this Agreement to be consistent with such law or regulation for the City and the Business Associate to be and remain in compliance with all applicable laws and regulations.
- E. **Construction of Terms.** A reference in this Agreement to a section in the HIPAA Rules means the section in effect or as amended at the time. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

Agreed to by the parties through the signatures of their authorized representatives below:

THE CITY OF AUSTIN, TEXAS

By: Blanche Quarterman
[Signature]
Name: Blanche Quarterman
Title: Human Resources Manager
Date: February 4, 2020

THE BUSINESS ASSOCIATE:

By: [Signature]
[Signature]
Name: Robert G. Hassett, DO, MPH
Title: President, Treasurer and Corporate Secretary
Organization Name: Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers
Date: September 19, 2019

GOAL DETERMINATION REQUEST FORM

Buyer Name/Phone	Erin D'Vincent 4-3070	PM Name/Phone	Sydney Richardson 4-1899
Sponsor/User Dept.	ARR	Sponsor Name/Phone	<i>Blenche Quarterman</i> <i>512-974-1986</i>
Solicitation No	RFQS 1500 EAD4003	Project Name	Medical and Health Evaluation Program
Contract Amount	\$500,000	Ad Date (if applicable)	8/5/19
Procurement Type			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input type="checkbox"/> IFB – IDIQ <input checked="" type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Critical Business Need <input type="checkbox"/> Sole Source* <input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – JOC <input type="checkbox"/> PS – Project Specific <input type="checkbox"/> Commodities/Goods <input type="checkbox"/> Interlocal Agreement <input type="checkbox"/> AD – Design Build <input type="checkbox"/> IFB – Construction <input type="checkbox"/> PS – Rotation List <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Ratification			
Provide Project Description**			
Medical and Health Evaluation Program for job applicants and employees potentially exposed to levels of hazardous materials, respiratory contaminants, noise, or other occupational health-related conditions at or above the Permissible Exposure Limit as set forth by the Federal Occupational Safety and Health Administration ("OSHA").			
Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.			
RFQS 1100 OPJ0001 - no goals no subcontracting			
List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)			
94874 - 100%			
Erin D'Vincent		7/12/2019	
Buyer Confirmation		Date	

* Sole Source must include Certificate of Exemption


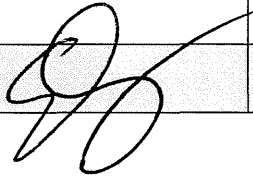
**Project Description not required for Sole Source

FOR SMBR USE ONLY			
Date Received	7/12/2019	Date Assigned to BDC	<i>7/15/19</i> 7/12/2019
In accordance with Chapter 2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:			
<input type="checkbox"/> Goals	% MBE	% WBE	
<input type="checkbox"/> Subgoals	% African American	% Hispanic	
	% Asian/Native American	% WBE	

GOAL DETERMINATION REQUEST FORM

<input type="checkbox"/> Exempt from MBE/WBE Procurement Program	<input checked="" type="checkbox"/> No Goals
--	--

GOAL DETERMINATION REQUEST FORM

This determination is based upon the following:	
<input checked="" type="checkbox"/> Insufficient availability of M/WBEs <input checked="" type="checkbox"/> Insufficient subcontracting opportunities <input checked="" type="checkbox"/> Sufficient availability of M/WBEs <input type="checkbox"/> Sole Source	<input type="checkbox"/> No availability of M/WBEs <input checked="" type="checkbox"/> No subcontracting opportunities <input type="checkbox"/> Sufficient subcontracting opportunities <input type="checkbox"/> Other
<i>If Other was selected, provide reasoning:</i>	
MBE/WBE/DBE Availability	
0 MBE's + 0 WBE's available	
Subcontracting Opportunities Identified	
No subcontracting opportunities	
Keisha Houston-McCutchin	
SMBR Staff 	Signature/ Date 7/16/17
SMBR Director or Designee 	Date 7/16/17
Returned to/ Date:	