



# Submittal Offer and Certifications

Solicitation No.  
IFB 7800 JSB1006

## SUBMITTAL CONTENTS

OFFER CERTIFICATION .....	1
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION .....	2
SUSPENSION AND DEBARMENT CERTIFICATION .....	4
NON-COLLUSION AND NON-CONFLICT OF INTEREST CERTIFICATION .....	5
ANTI-LOBBYING CERTIFICATION .....	7
NONRESIDENT BIDDER AND MANUFACTURING CERTIFICATION .....	8
LOCAL PRESENCE CERTIFICATION – OPTIONAL .....	9
SUBCONTRACTING UTILIZATION FORM.....	10
SUBCONTRACTING UTILIZATION PLAN .....	12

## OFFER CERTIFICATION

**Instructions.** Offerors shall complete and sign the Offer Certification section of this section as indicated. Offerors shall not complete any portions of the Acceptance section below. Submittals with incomplete and/or unsigned Offer Certification are not considered to be Offers and will be rejected as nonresponsive.

Company Name: **TEXAS PACK + LOAD**

Company Address: **1030 BRUSSELS ST**

City, State, Zip: **SAN ANTONIO, TX 78219**

Company's Austin Finance Online Vendor Registration No. User ID # V0000959700

Company's Officer or Authorized Representative: **MATTHEW OLINICK**

Title of Officer or Authorized Representative: **OPERATIONS MANAGER**

Email: **MOLINICK@TEXASPACKANDLOAD.COM**

Offeror's Phone: **210-239-2282**

Offeror's Signature: 

Date: **5/26/20**

**OFFER:** The above signed, 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 Offeror, by submitting and signing below, acknowledges that he/she has received and read the entire document packet including all revisions, and addenda and agrees to be bound by the terms therein.

## ACCEPTANCE BY THE CITY

**For City Staff only.** The City will complete and sign this section only if the City accepts the Offer.

Contract Number: 7800 GA200000064

Printed Name of City's Authorized Procurement Staff: Bartley Tyler

Title of City's Authorized Procurement Staff: Procurement Specialist II

Signature: Bartley Tyler

Digitally signed by Bartley Tyler  
Date: 2020.08.31 11:02:19 -05'00'

Date: 08/31/2020

Email: bartley.tyler@austintexas.gov

Phone: 512-974-2023

**ACCEPTANCE:** The Offer is hereby accepted. Contractor is now bound to sell the materials or services specified in the Contract.



# Solicitation INSTRUCTIONS

Solicitation No.  
**IFB 7800 JSB1006**

## 1 INVITATION FOR BIDS

- 1.1 Invitation.** The City of Austin invites all Responsible Offerors to submit Bids to provide the goods and/or services described in this Solicitation.
- 1.2 Documents.** This Invitation for Bids ("IFB" or "Solicitation") is composed of all documents listed in the Attachments section of the Solicitation Cover Sheet.
- 1.3 Process.** The process described in this IFB is the Competitive Sealed Bidding process. This process is procedurally compliant with the competitive bidding processes prescribed by Texas Local Government Code Ch. 252, Ch. 271, as well as Government Code Ch. 2269.
- 1.4 Changes.** The City may change or revise any of the contents of this Solicitation through the issuance of a written Addendum. Any Addenda issued will be added to the Attachments section of the Solicitation Cover Sheet. The Version number displayed in the Solicitation Cover Sheet will indicate the number of Addenda issued. 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.
- 1.5 Review of Documents.** Offerors shall review the entire Solicitation, as revised. Offerors shall notify the Authorized Contact Person(s) listed on the Solicitation Cover Sheet in writing of any omissions, ambiguities, inconsistencies or errors in the Solicitation prior to the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet. Offerors shall also notify the City of any Solicitation contents the Offeror believes may be unreasonably restrictive.
- 1.6 Cancellation.** The City reserves the right to cancel this Solicitation at any time for any reason and to resolicit the goods and services included in this Solicitation.

## 2 PUBLICATION AND NOTICES

- 2.1 Publication.** This Solicitation was published in the City's financial services website, Austin Finance Online, as of the Published date displayed in the Solicitation Cover Sheet section.
- 2.2 Email Notices.** On the Solicitation's Published date, email notices regarding this Solicitation were issued to all vendors registered in Austin Finance Online, that had previously selected the NIGP Codes displayed in the Solicitation Cover Sheet section. All subsequent email notices regarding this Solicitation will be limited to those vendors or other persons that subscribe to this Solicitation in Austin Finance Online.
- 2.3 Newspaper Notices.** If applicable, one or more notices of this Solicitation were published in the newspaper as required by statute.
- 2.4 Third-Party Notices.** Austin Finance Online is the only source of official notices regarding this Solicitation. Prospective Offerors shall not rely on any notices concerning this Solicitation received from sources other than Austin Finance Online.

### 3 COMMUNICATIONS AND MEETINGS

- 3.1 Authorized Contact Persons.** The names and contact information for the authorized contact persons for this Solicitation are displayed in the Solicitation Cover Sheet. Offerors needing assistance contacting an Authorized Contact Person regarding this Solicitation may also contact the Purchasing Office's main line at (512) 974-2500 and request assistance from any member of the Purchasing Office's management team. Offerors may direct specific questions concerning subcontractors and responding to the Minority-owned Business Enterprise and Women-owned Business Enterprise Procurement Program requirements to the SMBR contact, also listed on the Solicitation Cover Sheet.
- 3.2 Questions.** Offerors shall submit any questions concerning this Solicitation in writing via e-mail to the Authorized Contact Persons displayed on the Solicitation Cover Sheet. The City will respond to all questions received by the Questions Due Date and Time displayed on the Solicitation Cover Sheet. The City will publish one or more Addenda displaying all timely received questions and the City's responses to each for any information not already contained in the solicitation.
- 3.3 Vendor Help Desk.** For general questions concerning the City's online financial services system, Austin Finance Online, Vendor Connection ("Vendor Connection"), Offerors may contact the Vendor Help Desk at (512) 974-2018. Assistance from the Vendor Help Desk is limited to navigating and using Vendor Connection only. The Vendor Help Desk will not respond to any questions concerning a specific Solicitation.
- 3.4 No-Lobbying.** This Solicitation is subject to City Code, Ch. 2-7, Article 6, Anti-Lobbying and Procurement. ([https://assets.austintexas.gov/purchase/downloads/New\\_ALO\\_Ordinance\\_No\\_20180614-056.pdf](https://assets.austintexas.gov/purchase/downloads/New_ALO_Ordinance_No_20180614-056.pdf)) The No-Lobbying period for this Solicitation starts on the Published Date displayed on the Solicitation Cover Page. The No-Lobbying Period continues through the earliest of the following: (i) the Solicitation is cancelled, (ii) the last of any resulting contract(s) are executed, or (iii) 60-days following Council authorization of the last contract resulting from this Solicitation. The No-Lobbying Period continues throughout the completion of the solicitation process. During the No-Lobbying Period, Offerors, Respondents and/or their Agents shall not make any prohibited communications to City Officials or City employees other than the Authorized Contact Persons. Respondents includes both prospective and actual Offerors.
- 3.5 Pre-Offer Conferences.** The City may hold one or more pre-Offer conferences to review the Solicitation and to receive verbal questions. The Solicitation Cover Sheet will display if a Pre-Offer Conference is being held and if attendance at this meeting is mandatory. If a Pre-Offer Conference is planned, the date, location, time and any other necessary information regarding this meeting will also be displayed in the Solicitation Cover Sheet. Attendance at any Pre-Offer Conference will be recorded and will be included in an Addendum published following the meeting. As the Solicitation is subject to changes (See Solicitation Instruction, 1.4 Changes.) Offerors shall not rely on verbal exchanges that may occur at a Pre-Offer Conference. Offerors shall continue to submit all questions in writing (See Solicitation Instructions, 3.2 Questions.)
- 3.6 Site Visits.** The City may hold one or more site visits to allow prospective Offerors to inspect the location(s) where work under any resulting contract will be performed and to receive verbal questions. The Solicitation Cover Sheet will display if a Site Visit is being held and if attendance at this meeting is mandatory. If a Site Visit is planned, the date, location, time and any other necessary information regarding this meeting will also be displayed in the Solicitation Cover Sheet. Attendance at any Site Visit will be recorded and will be included in an Addendum published following the meeting. As the Solicitation is subject to changes (See Solicitation Instruction, 1.4 Changes.) Offerors shall not rely on verbal exchanges that may occur at a Pre-Offer Conference. Offerors shall continue to submit all questions in writing (See Solicitation Instructions, 3.2 Questions.)



**4 OFFER PREPARATION**

- 4.1 Offer Submittals.** Offerors intending to respond to this Solicitation shall download and complete each of the Submittal documents listed in the Solicitation Cover Sheet. Submittal documents will include additional Solicitation instructions specific to its contents. Offerors will complete each Submittal in accordance with the instructions in the submittal. At a minimum, submittals will include a Price Offer and an Offer and Certifications submittal.
- 4.2 Offer Acceptance Period.** All Offers are valid for a period of one hundred and fifty (150) calendar days subsequent to the IFB closing date.
- 4.3 Alternate Offers.** Unless excluded elsewhere in the Solicitation, Offerors may submit alternative Offers, in addition to their primary Offer. Offerors seeking to submit an alternative Offer may include with their completed Submittals, any alternative Submittals as applicable.
- 4.4 Proprietary and Confidential Information.** All Offers received and opened by the City are subject to the Texas Government Code, Ch. 552, and will be made available to the public. With the exception of the Prices and Pricing Submittal, which shall not be kept confidential, Offerors seeking to keep any other portions of their Offer confidential shall mark each such portion as "Proprietary". The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The City may request a review and determination from the Attorney General's Office of the State of Texas, of any Bid contents marked as "Proprietary". A copyright notice or symbol is insufficient to identify proprietary or confidential information.
- 4.5 Cost of Offer Preparation and Participation.** Offerors are responsible for all costs related to the preparation of their Offer and incurred while participating in this Solicitation process.

**5 OFFER SUBMISSION**

Offers in response to this Solicitation may be submitted using one of the following methods.

- 5.1 Hardcopy Offers.** Hardcopy Offers (physical documents including paper and flash drives) shall be delivered to the City of Austin's Purchasing Office at one of the following addresses, depending on the delivery method:

Deliveries by US Mail	Deliveries by Courier Services (e.g., Fedex, UPS, etc.) and In-Person Deliveries
City of Austin Purchasing Office Response to Solicitation: IFB 7800 JSB1006 P.O. Box 1088 Austin, Texas 78767-8845	City of Austin, Municipal Building Purchasing Office Response to Solicitation: IFB 7800 JSB1006 124 W 8 <sup>th</sup> Street, Rm 310 Austin, Texas 78701 Reception Phone: (512) 974-2500

- 5.1.1 Due Date and Time for Hardcopy Offers.** Hardcopy Offers in response to this Solicitation shall be received by the City via one of the aforementioned delivery methods by the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet. The time stamp clock at the Purchasing Office reception desk shall be the official time of record for Hardcopy Offers.
- 5.1.2 Withdrawing Hardcopy Offers.** Hardcopy Offers submitted may be withdrawn in writing, in person, or by email at any time prior to the Solicitation's Due Date and Time. When a Hardcopy Offer is withdrawn, the Purchasing

Office will provide the Offeror with a receipt documenting the withdrawal, which must be acknowledged in writing by the Offeror.

- 5.1.3 Late Hardcopy Offers.** All Hardcopy Offers received after the Solicitation's Due Date and Time will be rejected. Late Hardcopy Offers that are inadvertently received by the City shall be returned to the Offeror. It is the responsibility of the Offeror to ensure that their Offer arrives at the proper location by the Solicitation's Due Date and Time. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Hardcopy Offer arriving on time. The City may, at its sole discretion, receive a late Hardcopy Offer if the City's misdirection or mishandling was the sole or main cause for the Hardcopy Offer's late receipt at the designated location.
- 5.1.4 Opening Hardcopy Offers.** The City will open Hardcopy Offers on or shortly after the Offer Opening Date and Time stated on the Solicitation's Cover Sheet. When Hardcopy Offers are opened, the names of each Offeror would be read aloud. For Solicitations conducted via Competitive Sealed Bidding, the Price Offer for each Offeror will be available to read aloud. If no one is in attendance at the Solicitation Opening, the aggregate price will be read aloud, with the remaining Price Offer available for public inspection immediately following the Solicitation opening.
- 5.2 Electronic Offers.** Electronic Offers (electronic documents) shall be submitted to the City of Austin using the Solicitation's eResponse function, available through the City's online financial system, Austin Finance Online. To submit Electronic Offers using the eResponse function, Offeror's must first be registered as a vendor with the City of Austin in Austin Finance Online.
- See [Attachment 1, Submitting Offers in Austin Finance Online](#).
- 5.2.1 Due Date and Time for Electronic Offers.** Electronic Offers in response to this Solicitation shall be submitted via eResponse by the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet. The system time within Austin Finance Online shall be the official time of record for Electronic Offers.
- 5.2.2 Withdrawing Electronic Offers.** Electronic Offers submitted online in response to this Solicitation may be withdrawn, revised and resubmitted using the eResponse function any time prior to the Solicitation's Due Date and Time. Withdrawn Electronic Offers may be resubmitted, with or without modifications, up to the Solicitation's Due Date and Time.
- 5.2.3 Late Electronic Offers.** The Solicitation's eResponse function in Austin Finance Online will not allow Electronic Offers to be submitted past the Solicitation's Due Date and Time.
- 5.2.4 Opening Electronic Offers.** The information regarding Electronic Offers will become available on or shortly after the Offer Opening Date and Time stated on the Solicitation's Cover Sheet. When Electronic Offers are opened, the names of each Offeror would be displayed within the Solicitation's eResponse section. For Solicitations conducted via Competitive Sealed Bidding, the Price Offer for each Offeror will also be displayed in the eResponse section.
- 5.3. Solicitation Openings – Special procedures due to 2020 COVID-19 Pandemic.** Due to the current Pandemic circumstances, the City is not facilitating public attendees at Solicitation openings. Instead, the City will conduct this Solicitation opening via live webcast at the following website: [https://www.austintexas.gov/financeonline/afo\\_content.cfm?s=66](https://www.austintexas.gov/financeonline/afo_content.cfm?s=66).

When conducting a Solicitation opening via webcast, the City will read the applicable information from Hardcopy Offers aloud and will referring the public to the Solicitation's eResponse section to view the remaining Electronic Offers.

## 6 OFFER EVALUATION

- 6.1 Basis of Competition.** The City may compare bids based on the prices for individual line items, the prices for categories of line items or the aggregate price bid. The City will choose the basis of competition that best meets the City's needs for the resulting contracts.
- 6.2 Price Evaluation.** Once the City determines the basis of competition, the City will sort the bids from low to high price.
- 6.3 Responsiveness Evaluation.** Once the low bid is identified, the City will evaluate the bid for responsiveness with all Solicitation requirements. A bid is responsive if it complies with all Solicitation Instructions, scope and specifications. If a bid is found to be nonresponsive, the City will set it aside and proceed with evaluating the next lowest bid for responsiveness.
- 6.4 Responsibility Evaluation.** Once the low responsive bid is identified, the City will evaluate the Offeror submitting the low responsive bid for their responsibility. An Offeror is responsible if they have the financial and practical ability, resources, expertise, past performance and positive compliance history with all City ordinances. If an Offeror is found to be non-responsive, the City will set their bid aside and proceed with evaluating the responsibility of the Offeror submitting the next low and responsive bid.
- 6.5 Minor Informalities.** In conducting evaluations, the City may waive as an informality, any minor deviations in the Solicitation's contents or in the Offers received, in procedure or in specifications, provided such deviations do not affect the Solicitation's competition.

## 7 CONTRACT AWARD AND EXECUTION

- 7.1 Award Determination.** The City will award the contract to the responsible Offeror submitting the low responsive bid.
- 7.2 Multiple Awards.** If the City determines that multiple contracts are needed, the City will award one or more additional contracts to the responsible Offerors submitting the next lowest responsive bids.
- 7.3 Contract Execution.** Contracts within the City Manager's authority will be awarded and executed simultaneously. Contracts above the City Manager's authority will be executed following their authorization by the Austin City Council.

## 8 ADMINISTRATIVE MATTERS

- 8.1 Solicitation File.** All documents included in this Solicitation, and all timely received Offers in response to this Solicitation, except for Offer contents deemed by Offerors to be proprietary and confidential, will be available for public inspections upon the publication of the City's recommendation of award. The recommendation of award will be posted in Austin Finance Online.
- 8.2 Debriefings.** Offerors may request a debriefing meeting to ask any questions concerning the Solicitation's contents, process or the evaluation of their Offer. Debriefing meetings are informal exchanges and may be requested anytime following the earlier of (i) after the contract resulting from this Solicitation is executed, or in the case of multiple awards, the last contract is executed; (ii) the date the Solicitation is cancelled. Debriefings are not public called meetings in accordance with the Texas Open Meetings Act and are usually limited to a single Offeror and any of their representatives. Only information regarding the Solicitation documents and the Offeror's Offer in response to the Solicitation will be discussed.

**8.3 Reservations.** The City expressly reserves the right to the following: (i) specify approximate quantities in the Solicitation; (ii) extend the Solicitation closing date and time; (iii) add additional terms or modify existing terms in the Solicitation; (iv) reject an Offer containing exceptions, additions, qualifications or conditions not called for in the Solicitation; (v) reject an Offer received from an Offeror who is currently debarred or suspended by the City, State, or Federal Government; (vi) reject an Offer that contains fraudulent information; (vii) reject an Offer that has material omissions; (viii) reject or cancel any or all Offers; (ix) reissue a Solicitation; (x) procure any item by other means; (xi) consider and accept alternate Offers, if specified in the Solicitation, when most advantageous to the City; and/or (xii) reject an Offer if prices in the Offer are unbalanced (significantly less than cost for some items and significantly more than cost for others).

**8.4 Protests.** 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. Protest regarding the Solicitation (Pre-Bid Protest). Any protest regarding the Solicitation by the City shall be filed no later than five (5) days before the opening of Bids. Any protest filed after that date which raises issues regarding the Solicitation will not be considered.
- B. Protests regarding the evaluation of Bids. Any protest regarding the evaluation of Bids by the City shall be filed with the City no later than five (5) days after the opening of Bids, or notification that the protestor's status as a Offeror has changed, such as notification that a Bid has been rejected. Any protest filed after such date which raises issues regarding the evaluation will not be considered.
- C. Protest Regarding Award of Contract (Post-Award Protest). Any protest regarding the award of the contract shall be filed no later than ten (10) days after the date of award. Any protest regarding the award of the contract filed after such date will not be considered.
- D. You shall submit your protest in writing and it shall include the following information: (i) your name, address, telephone, and email address; (ii) the Solicitation number; (iii) the specific facts and/or law upon which the protest of the Solicitation or the award is based, including all pertinent documents and evidence thereto; and (iv) the form of relief requested.
- E. Your protest shall be concise and presented logically and factually to help with the City's review.
- F. 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.
- G. 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 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.
- H. A decision will usually be made within fifteen (15) calendar days after the hearing.
- I. The City will send you a copy of the hearing decision after the appropriate City staff has reviewed the decision.
- J. 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 the City urgently



requires the supplies or Services to be purchased, or 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.

## 9 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.

“Addendum” means 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.

“Bid” means a complete, properly signed Offer submitted in response to this Solicitation, which if accepted, would bind the Offeror to perform the resultant Contract.

“City” means the City of Austin, a Texas home-rule municipal corporation.

“Competitive Sealed Bidding” means the competitive process described within an Invitation for Bids, wherein the City invites Offerors to submit bids to supply the City with the Goods and/or Service describes in the Solicitation document, where the City will award the resulting contract to the responsible Offeror submitting the low responsive bid.

“Invitation for Bids (IFB)” means a complete packet of documents describing the City’s competitive sealed bidding process, including but not limited to Solicitation instructions, Standard and Special contract terms and conditions, and the submittals necessary for Offerors to respond to the Solicitation.

“Offer” means a complete signed response to a Solicitation including, but not limited to, an Invitation for Bids.

“Offeror” means a person, firm, or entity that submits an Offer in response to this 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.

“Price and Pricing Submittal” means a document, submitted by an Offeror in response to this Solicitation, containing unit and extended Bid prices for one or more of the Goods and/or Services identified by in the Prices and Pricing Submittal document.

“Purchasing Office” refers to the Purchasing Office in the Financial Services Department of the City.

“Purchasing Officer” means the director of the Purchasing Office and the principle recipient of procurement authority from the City Manager.

“Responsible Offeror” means 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.

“Responsive” means meeting all the requirements of a Solicitation.

“Solicitation” means this Invitation for Bids or IFB.

**CITY OF AUSTIN**  
**TERMS AND CONDITIONS**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

The Contractor agrees that the Contract shall be governed by the following terms and conditions.

**1. GENERAL**

**1.1 TERM OF CONTRACT:**

- A. The Contract shall commence upon execution unless otherwise specified and shall continue in effect until all obligations are performed in accordance with the Contract. Upon written notice to the Contractor from the City's Purchasing Officer or designee, the Contract may be extended beyond the initial term at the City's sole option unless the Contractor is notified 30 days prior to the expiration. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
- B. Upon expiration of the initial term or any period of extension, the Contractor agrees to holdover under the terms and conditions of this Contract for such a period as is reasonably necessary for the City to re-solicit and/or complete the Deliverables due under this Contract. Any holdover period will not exceed 180 calendar days unless mutually agreed on by both parties in writing.

**1.2 INDEFINITE QUANTITY:**

The quantities and/or services listed herein are estimates of the goods and services needed by the City for the period of the Contract. The City reserves the right to purchase more or less of these quantities and/or services as may be required during the Contract term. Quantities and/or services will be as needed and specified by the City for each order. Unless specified in the Contract, there are no minimum order quantities.

**1.3 INVOICES:**

- A. The Contractor shall submit separate Invoices for each Order after each delivery or on the schedule provided in the Contract. If partial shipments or deliveries are authorized by the City, a separate Invoice must be sent for each shipment or delivery made.
- B. Invoices shall be sent to the address on the Purchase Order or Delivery Order in the section entitled, "BILL TO". Proper Invoices must include a unique Invoice number, the purchase Order or delivery Order number, 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 according to pricing structure in the Contract. 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. Invoices received without all required information cannot be processed and will be returned to the vendor.
- C. Invoices for labor shall include a tabulation of workhours at the appropriate rates and grouped by work Order number. Time billed for labor shall be limited to hours actually worked.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontracting and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the Invoiced amount. The City will furnish a tax exemption certificate upon request.

**CITY OF AUSTIN**  
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**1.4 PAYMENT:**

- A. All proper Invoices received by the City will be paid within 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 §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 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 under the terms of this Contract, are filed or there is 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 demonstrates 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, §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. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer 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.
- 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 inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City. 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 notice of non-appropriation.

**1.5 FINAL PAYMENT AND CLOSE OUT:**

- A. If a Minority-Owned Business Enterprise/Women-Owned Business Enterprise (MBE/WBE) Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the

**CITY OF AUSTIN**  
**TERMS AND CONDITIONS**  
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**SOLICITATION NO.: IFB 7800 JSB1006**

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.

**1.6 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.

**1.7 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, at the City's expense. The Contractor agrees to refund to the City any overpayments disclosed by any such audit. The City agrees to protect from disclosure Contractor's confidential and proprietary information disclosed during an audit to the same extent it protects its own confidential and proprietary information, subject to the requirements of the Texas Public Information Act, Chapter 2251, Texas Government Code.
- B. Records Retention:
- i. Contractor is subject to City Code Chapter 2-11 (Records Management), and as it may subsequently be amended.
  - ii. The Contractor shall retain all records for a period of three 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.

**1.8 FINANCIAL DISCLOSURES AND ASSURANCE:**

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.

**1.9 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. If 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.

**CITY OF AUSTIN**  
**TERMS AND CONDITIONS**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

**1.10 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.

**1.11 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, (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. The City shall be in default if it fails to make payment in accordance with the Payment terms of this Contract.

**1.12 TERMINATION FOR CAUSE:**

In the event of a default by either party, the non-defaulting party 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 defaulting party, within such 10 day period, cures such default, or provides evidence sufficient to prove to the non-defaulting party's reasonable satisfaction that such default does not, in fact, exist. Additionally, the City shall have the right to act in accordance with the terms defined by "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors." In addition to any other remedy available under law or in equity, either party shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the party as a result of the Contractor's default, including, without limitation, cost of cover, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and not exclusive of any other right or remedy provided by law.

**1.13 ATTORNEY'S FEES:**

In consideration of the award and execution of this Contract and in consideration of the City's waiver of its right to attorney's fees, the Contractor knowingly and intentionally waives its right to attorney's fees under §271.153, Texas Local Government Code, in any administrative proceeding, alternative dispute resolution proceeding, or litigation arising out of or connected to this Contract.

**1.14 TERMINATION WITHOUT CAUSE:**

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

**1.15 FRAUD:**

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



**CITY OF AUSTIN**  
**TERMS AND CONDITIONS**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

**1.16 DELAYS:**

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 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 Clause. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

**1.17 FORCE MAJEURE:**

Contractor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, pandemic, sovereign conduct, or court order provided that the Contractor experiences the event of force majeure and prudently and promptly acts to take any and all steps that are within the Contractor's control to ensure performance and to shorten the duration of the event of force majeure. Contractor shall provide notice of the force majeure event to the City within three (3) business days of the event or delay, whichever occurs later, to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, the City may terminate an order under the Contract if it is determined by the City that the Contractor will not be able to deliver goods or services in a timely manner to meet the business needs of the City.

**1.18 INDEMNITY:**

A. IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS ASSIGNED BELOW:

- i. "INDEMNIFIED PARTY" IS THE CITY AND THE CITY'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS.
  - (1) "INDEMNIFYING PARTY" IS THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.
  - (2) THE INDEMNIFYING PARTY SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE INDEMNIFIED PARTY AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, DEFICIENCIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, PENALTIES, FINES, COSTS OR EXPENSES, INCLUDING PROFESSIONAL FEES AND ATTORNEYS' FEES, THAT ARE INCURRED BY THE INDEMNIFIED PARTY ARISING OUT OF ANY DIRECT OR THIRD PARTY CLAIM OF:
- ii. BREACH OR NON-FULFILLMENT OF ANY PROVISION OF THIS CONTRACT BY THE INDEMNIFYING PARTY;
- iii. ANY FALSE REPRESENTATION OR WARRANTY MADE BY THE INDEMNIFYING PARTY IN THIS CONTRACT OR IN THE INDEMNIFYING PARTY'S PROPOSAL/RESPONSE LEADING TO THIS CONTRACT;
- iv. ANY NEGLIGENT OR MORE CULPABLE ACT OR OMISSION OF THE INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT, RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT;
- v. BODILY INJURY; DEATH OF ANY PERSON; OCCUPATIONAL ILLNESS OR DISEASE; LOSS OF SERVICES, WAGES, OR INCOME; OR DAMAGE TO REAL OR PERSONAL PROPERTY CAUSED BY THE NEGLIGENT OR MORE CULPABLE ACTS OR OMISSIONS OF INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT; OR

**CITY OF AUSTIN**  
**TERMS AND CONDITIONS**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

- vi. ANY FAILURE OF THE INDEMNIFYING PARTY TO COMPLY WITH ANY APPLICABLE FEDERAL, STATE, OR LOCAL LAWS, REGULATIONS, OR CODES RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT.
- B. ***THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER THIS SECTION ARE NOT EXCUSED IN THE EVENT A CLAIM IS CAUSED IN PART BY THE ALLEGED NEGLIGENCE OR MORE CULPABLE ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT.***
- C. THE INDEMNIFIED PARTY SHALL GIVE THE INDEMNIFYING PARTY WRITTEN NOTICE (A "CLAIM NOTICE") OF ANY CLAIM RECEIVED RELATED TO THIS CONTRACT. THE INDEMNIFYING PARTY'S DUTY TO DEFEND APPLIES IMMEDIATELY. THE INDEMNIFIED PARTY'S FAILURE TO PROVIDE A CLAIM NOTICE TO THE INDEMNIFYING PARTY DOES NOT RELIEVE THE INDEMNIFYING PARTY OF ITS DUTY TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNIFIED PARTY.
- D. THE INDEMNIFIED PARTY MAY SELECT ITS OWN LEGAL COUNSEL TO REPRESENT ITS INTERESTS. THE INDEMNIFYING PARTY SHALL:
  - i. REIMBURSE THE INDEMNIFIED PARTY FOR ITS COSTS AND ATTORNEY'S FEES IMMEDIATELY UPON REQUEST, AS THEY ARE INCURRED, AND
  - ii. REMAIN RESPONSIBLE TO THE INDEMNIFIED PARTY FOR ANY LOSSES INDEMNIFIED UNDER THIS SECTION.
- E. THE INDEMNIFYING PARTY SHALL GIVE PROMPT, WRITTEN NOTICE TO THE INDEMNIFIED PARTY OF ANY PROPOSED SETTLEMENT OF A CLAIM THAT IS INDEMNIFIABLE UNDER THIS SECTION. THE INDEMNIFYING PARTY MAY NOT, WITHOUT THE INDEMNIFIED PARTY'S PRIOR, WRITTEN CONSENT, SETTLE OR COMPROMISE ANY CLAIM OR CONSENT TO THE ENTRY OF ANY JUDGMENT REGARDING WHICH INDEMNIFICATION IS BEING SOUGHT UNDER THIS SECTION.
- F. MAINTENANCE OF THE INSURANCE REQUIRED BY THIS CONTRACT SHALL NOT LIMIT THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER THIS SECTION. THE INDEMNIFYING PARTY SHALL REQUIRE ALL SUBCONTRACTORS TO INDEMNIFY THE CITY IN THE SAME MANNER AS PROVIDED IN THIS SECTION.

**1.19 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 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. Notices to the Contractor shall be sent to the address registered with the City. 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 assigned Procurement Specialist.

**1.20 CONFIDENTIALITY:**

The Contractor may be granted access to certain of the City's or licensor's confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which City or its licensors consider confidential) (Confidential Information) to provide the Deliverables to the City. The Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and its licensors. The Contractor (including its employees, Subcontractors, agents, or representatives) agrees it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without prior written consent of City,

**CITY OF AUSTIN**  
**TERMS AND CONDITIONS**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an Order of a court or other governmental authority (including a Texas Attorney General opinion) with proper jurisdiction. In all cases, the Contractor agrees to promptly notify the City before disclosing Confidential Information 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 in its business to protect its own most valuable information. In all circumstances, the Contractor's protective measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

- A. Confidential information includes, but is not limited to, all information regarding commercial data, customer information, financial data and projections, pricing proposals, and cost analyses, whether in tangible form or orally or visually conveyed to, or acquired by, the Contractor in the course of its work under the Contract. Confidential Information may be in any medium and may be written or oral.
- B. The Contractor agrees: (i) not to use Confidential Information for any reason other than for the purpose of providing or receiving the Deliverables, (ii) not to disclose Confidential Information to any third party other than to its employees who have a need to know the Confidential Information for furtherance of providing the Deliverables, (iii) to promptly notify City of any request for Confidential Information to be disclosed under any law or Order of any court or other governmental authority with proper jurisdiction, so as to permit City reasonable time to seek an appropriate protective Order, and (iv) to use measures to protect the Confidential Information that are no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
- C. All Confidential Information and derivations thereof shall remain the sole and exclusive property of City, and no license or other right to the Confidential Information or intellectual property is granted or implied hereby. Upon the written request of City, the Contractor shall promptly return to City all tangible items of Confidential Information furnished by City and all copies thereof or certify in writing that all Confidential Information, including all copies, has been destroyed.
- D. No expiration or termination of the Contract shall affect either party's rights or obligations with respect to Confidential Information.
- E. The parties acknowledge and agree that any breach or threatened breach of the Contract could cause harm for which money damages may not provide an adequate remedy.  
The parties agree that in the event of such a breach or threatened breach of the Contract, in addition to any other available remedies, City may seek temporary and permanent injunctive relief restraining the Contractor from disclosing or using, in whole or in part, any Confidential Information.

**1.21 TEXAS PUBLIC INFORMATION ACT:**

- A. All material submitted by the Contractor to the City related to the Contract 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.
- B. In accordance with Texas Government Code §552.372, if this Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a fiscal year, Contractor agrees to:

**CITY OF AUSTIN**  
**TERMS AND CONDITIONS**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

- i. Preserve all Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract;
  - ii. Promptly provide to the City any Contracting information related to the Contract that is in the custody or possession of Contractor on request of the City; and
  - iii. On completion of the Contract, either:
    - (1) Provide at no cost to the City all Contracting information related to the Contract that is in the custody or possession of Contractor; or
    - (2) Preserve the Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract.
- C. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract, and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that Subchapter.

**1.22 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.

**1.23 ADVERTISING:**

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

**1.24 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.

**1.25 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.

**1.26 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

**CITY OF AUSTIN**  
**TERMS AND CONDITIONS**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

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.

**1.27 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.

**1.28 ASSIGNMENT DELEGATION:**

The Contract shall be binding upon and ensure 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.

**1.29 WAIVER:**

The 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.

**1.30 MODIFICATIONS:**

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

**1.31 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.

**1.32 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 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



**CITY OF AUSTIN**  
**TERMS AND CONDITIONS**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

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 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 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 consider 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 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The parties agree to participate in mediation in good faith for up to 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.

**1.33 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, 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.

**1.34 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.

**1.35 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

**CITY OF AUSTIN**  
**TERMS AND CONDITIONS**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

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.

**1.36 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.

**1.37 COOPERATIVE CONTRACT:**

- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, for the purpose of accessing their cooperative contracts and making available our cooperative contracts, 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 of this cooperative contract to other eligible governmental agencies that have entered into an interlocal agreement with the City for the purpose of accessing the City's cooperative contracts.
- B. The City does not accept any responsibility or liability for the purchases by other governmental entities made under a separate contract based on this cooperative contract.

**1.38 NON-DEBARMENT CERTIFICATION:**

When using Federal funds, the City of Austin does not Contract with or make prime or sub-awards to parties that are debarred or whose principals are debarred from Federal Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently 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 Contractor shall notify the Procurement Specialist within five business days if they become debarred from doing business with the Federal Government during the term of the Contract.

**CITY OF AUSTIN**  
**TERMS AND CONDITIONS**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

**1.39 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. **Non-Retaliation:** 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.
- C. **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.

**1.40 MANDATORY ANTI-ISRAEL BOYCOTT PROVISION:**

Pursuant to *Amawi v. Pflugerville Independent School District*, 373 F.Supp.3d 717 (W.D. Texas 2019), the State of Texas is preliminarily enjoined from enforcing this provision. However, if that injunction is lifted, this provision may apply to the Contract:

Pursuant to Texas Government Code §2271.002, 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 §2271.001.
- B. If the Contractor qualifies as a "company", then the Contractor verifies that he:
  - i. does not "boycott Israel"; and
  - ii. will not "boycott Israel" during the term of this Contract.
- C. The Contractor'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 2271 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.

**1.41 PROHIBITION ON LGBTQ+ CONVERSION THERAPY:**

The Contractor certifies that it is aware of City Council Resolution No. 20191114-056, which prohibits the City from Contracting with entities that engage in certain practices related to conversion therapy. By accepting this Contract, the Contractor agrees that: (1) its firm and its principals are not currently and will not during the term of the Contract engage in practicing LGBTQ+ conversion therapy; referring persons to a healthcare provider or other person or organization for LGBTQ+ conversion therapy; or Contracting with another entity to conduct LGBTQ+ conversion therapy; and (2) if the City determines in its sole discretion that Contractor has during the term of this Contract engaged in any such practices, the City may terminate this Contract without penalty to the City.

**CITY OF AUSTIN**  
**TERMS AND CONDITIONS**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

**1.42 SUBCONTRACTORS:**

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or Subcontractor 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 Subcontractor 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 no later than the 10<sup>th</sup> 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 and services 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 follow terms as defined in section, AUDITS AND RECORDS and City Code Chapter 2-11
- 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 10 calendar days after receipt of payment from the City.

**1.43 ECONOMIC PRICE ADJUSTMENT:**

- A. **Price Adjustments:** Prices shown in this Contract shall remain firm for the first 12 months of calendar 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

**CITY OF AUSTIN**  
**TERMS AND CONDITIONS**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

twenty-five (25) percent 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 will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.
- i. The following definitions apply:
- (1) **Base Period:** Month and year of the original Contracted price (the Solicitation close date).
  - (2) **Base Price:** Initial price quoted, proposed and/or Contracted per unit of measure.
  - (3) **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
  - (4) **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.
  - (5) **Weight %:** The percent of the Base Price subject to adjustment based on an index change.
    - a. **Adjustment-Request Review:** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
      - i. Utilize final Compilation data instead of Preliminary data
      - ii. If the referenced index is no longer available shift up to the next higher category index.
      - iii. Index Identification: Complete

Weight of Base Price: 100%	
Database Name: Consumer Price Index	
Series ID: CUUR0000SS48021	
<input checked="checked" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: U.S. city average	
Description of Series ID: Vehicle parts and equipment other than tires	
This Index shall apply to the following items of the Bid Sheet, Section 1 - Specified Items (Most Frequently Ordered Items)	

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

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



**CITY OF AUSTIN**  
**TERMS AND CONDITIONS**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

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,

**1.44 INSURANCE:**

**A GENERAL INSURANCE REQUIREMENTS:**

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages and endorsements required in Section B., Specific Insurance Requirements, to the City 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. 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.
- ii. All endorsements naming the City as additional insured, waivers, and notices of cancellation shall indicate, and the Certificate of Insurance shall be mailed to the following address:  
City of Austin Purchasing Office  
P.O. Box 1088  
Austin, Texas 78767  
OR  
[PURInsuranceCompliance@austinTexas.gov](mailto:PURInsuranceCompliance@austinTexas.gov)
- 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 authorized to do business in the State of Texas and have an A.M. Best rating 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 B., Specific Insurance Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- 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

**CITY OF AUSTIN**  
**TERMS AND CONDITIONS**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

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 exposure, 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 greater than \$499,999 shall be disclosed on the Certificate of Insurance.
- xii. If any required insurance is written on a claims-made basis, the Certificate of Insurance shall state that the coverage is claims-made and the retroactive date shall be prior to or coincident with the date of the Contract and the coverage continuous and shall be provided for 24 months following the completion of the Contract.
- xiii. The insurance coverages specified in Section B., Specific Insurance Requirements, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. **Specific Insurance Coverage Requirements:** The Contractor, consistent with its status as an independent Contractor shall carry and will cause its Subcontractors to carry, at a minimum 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.

- 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. 30 Days' Notice of Cancellation, Form WC420601, or equivalent coverage.
- ii. **Commercial General Liability Insurance:** Coverage with minimum bodily injury and property damage per occurrence limits of \$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. Independent Contractors coverage (Contractor/Subcontracted work);
    - c. Products/Completed Operations Liability for the duration of the warranty period;
    - d. If the project involves digging or drilling, provide Explosion, Collapse, and Underground (X, C, & U) 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. 30 Day's Notice of Cancellation, Endorsement CG 0205, or equivalent coverage;

**CITY OF AUSTIN**  
**TERMS AND CONDITIONS**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

- c. The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.
- iii. **Business Automobile Liability Insurance:** Coverage f or 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. 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.

Note: If shipment is made by common carrier, then the requirements for Workers Compensation Employee Liability and Business Automobile Liability Insurance are not required. The Contractor must provide a written statement if a common carrier will be used to deliver parts.

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. If 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.

## **2. GOODS**

### **2.1 DELIVERY AND PACKAGING TERMS:**

- A. **DELIVERY AND TRANSPORTATION CHARGES:** Deliverables shall be shipped F.O.B. destination, prepaid and allowed unless otherwise specified. Unless otherwise stated in this Contract, the Contractor's price shall be deemed to include all delivery and transportation charges of required mode of transportation. 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 set forth in the block of the Purchase Order or Delivery Order entitled "SHIP TO" and/or Offer Sheet. Unless requested by the City, deliveries shall not be made on City-recognized legal holidays. The City expressly reserves all rights under law, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables.
- B. **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. However, the Contractor shall have the right to substitute a conforming tender; provided if the time for performance has not yet expired. The Contractor shall notify the City of the intention to cure and may then make a conforming tender within the time allotted in the Contract.
- C. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** All Deliverables must be shipped complete unless arrangements for partial shipments are made in advance. 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-

**CITY OF AUSTIN**  
**TERMS AND CONDITIONS**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

conforming Deliverables or Services. 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 or Services. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor within 30 calendar days of notification provided by the City.

- D. **RIGHT OF INSPECTION AND REJECTION:** The City expressly reserves all rights under law to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables
- E. **CONTRACTOR PACKAGING 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, 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 Delivery Order 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 the 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.

**2.2 WARRANTY:**

**A. PRICE:**

- i. 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.
- ii. The Contractor warrants that its prices provided in this Contract are no higher than its current prices on orders for similar goods under similar terms of purchase.

- B. 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. 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.

- C. 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.

- i. 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.
- ii. 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.

**CITY OF AUSTIN**  
**TERMS AND CONDITIONS**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

The City shall endeavor to give the Contractor written notice of the breach of warranty within 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.

- iii. 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.
- iv. 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 fully assist and cooperate with the City to enforce such manufacturer's warranty for the benefit of the City.

**2.3 WARRANTY BY CONTRACTOR AGAINST INFRINGEMENTS:**

- A. 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.
- B. 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.
- C. 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.

**2.4 RESTOCKING FEES:**

- A. The Contractor may bill the City restocking fees (if specifically authorized by this Contract) for parts that are Ordered by the City under the Contract and returned for refund. The Contractor is not obligated to accept for refund any part that is not resalable and/or not in the same condition as when purchased.
- B. Restocking fees may be charged to the City when multiple parts or groups of parts are returned for refund at one time due to the City inventory warehouse cleaning, unless these parts are returned at an annual pre-arranged date. The date for the annual return shall be mutually agreed upon between the City and the Contractor.



**CITY OF AUSTIN**  
**TERMS AND CONDITIONS**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

**2.5 UNUSED INVENTORY (STOCK LIFT)**

- A. The City may require a stock lift on a quarterly basis. When required, the Contractor shall pick up and credit the City's account for items purchased during the Contract term which have not been used or have become obsolete for the City's needs, provided that these items are in the original cartons and in marketable condition. The amount credited to the City's account shall be the original purchase price for the items.
- B. The date for the quarterly stock lift shall be mutually agreed upon between the Contractor and the Fleet Services Materials Control Manager or designee.
- C. No restocking fees will be assessed for parts returned during a quarterly stock lift.
- D. At the end of the final Contract term, if the Contractor is not the successful vendor for the replacement Contract, when requested by the City, the Contractor shall pick up and refund the City for items purchased during the Contract term which were not used, provided the items are in the original cartons and in marketable condition. The amount refunded to the City shall be the original purchase price for the items less the restocking fee as outlined in the Restocking Fees provision above.

**2.6 PUBLISHED PRICE LISTS:**

The Published Price List may be superseded or replaced during the Contract term only if price revisions are the result of a modification to the manufacturer's official Published Price List. Written notification from the Contractor of price changes, along with one copy of the revised manufacturer's official Published Price List must be submitted to the Purchasing Office with the effective date of change to be at least 30 calendar days after written notification. The City reserves the right to refuse any list revision. The discounts or markups on equipment rental, material, supplies, parts, and Contract services shall be fixed throughout the term of the Contract and are not subject to increase. Failure to submit written notification of Published 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.

**2.7 OWNERSHIP AND USE OF DELIVERABLES:**

The City shall own all rights, titles, and interests throughout the world in and to the Deliverables, except as stated below.

- A. **Patents:** As to any patentable subject matter contained in the Deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.
- B. **Copyrights:** As to any Deliverable containing copyrighted subject matter, the Contractor agrees that upon their creation, such Deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights. In and to such Deliverables, provided however, that nothing in this Paragraph shall negate the City's sole or joint ownership of any such Deliverables arising by virtue of the City's sole or joint authorship of such Deliverables. Should by operation of law, such Deliverables not be considered work made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of Austin) all worldwide right, title, and interest in and to such Deliverables. With respect to such work made-for-hire, the Contractor agrees to execute,

**CITY OF AUSTIN**  
**TERMS AND CONDITIONS**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

acknowledge and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such Deliverables to the City or at such other time as the City may request.

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

**2.8 HAZARDOUS MATERIALS:**

- A. If this Contract involves hazardous materials, the Contractor shall provide the City the Material Safety Data Sheets (MSDS), OSHA Form 20, on all chemicals and hazardous materials being used, specifying the generic and trade name of product, product specification, and full hazard information including receiving and storage hazards. Instructions, special equipment needed for handling, information on approved containers, and instructions for the disposal of the material are also required.
- B. Failure to submit the MSDS is grounds for the City to terminate this Contract immediately.
- C. The MSDS, instructions and information required in Paragraph "A" must be included with each shipment under the Contract.

**2.9 WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID)**

- A. Access to the Fleet Services Department facilities by the Contractor, all subcontractors and their employees will be strictly controlled at all times by the City.
- B. Contractor personnel will be required to check in at the Service Writer's desk when entering or leaving the Fleet Services facility. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule.
- C. The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees and subcontractors are kept fully informed as to these requirements.

**CITY OF AUSTIN**  
**SCOPE OF WORK**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

**1. PURPOSE**

The City of Austin (City) seeks to establish a contract with a qualified Contractor to provide aftermarket parts for the City's refuse and garbage truck bodies, which include Heil, PAKMOR, Wayne, and McNellis on an as-needed basis.

The Contract will be utilized by the City's Fleet Services Department. The City reserves the right to allow other City Departments to utilize the Contract.

Any requirements or services that have been omitted from this Scope of Work that are clearly necessary or in conformance shall be considered a requirement although not directly specified or called for in the Scope of Work.

**2. DEFINITIONS**

2.1 Stock Parts: high turnover parts that are most commonly needed by the City.

2.2 Non-Stock Parts: low usage, high dollar parts that are not kept in inventory.

2.3 Back-ordered (or Out-of-Stock) Parts: parts that are not currently in stock but have been ordered or will be ordered.

2.4 Special Order Items: parts that are hard to find such as parts for older vehicles and equipment that are no longer manufactured or parts that are made to order or new parts that have a limited supply.

2.5 Service Center: any City facility where vehicles and equipment are repaired or serviced.

2.6 Code Red: when the City designates an order for parts that are critical to the extent that the City is willing to pay expedited shipping charges.

**3. TERM OF CONTRACT**

The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for a term of 60 months.

**4. CONTRACTOR QUALIFICATIONS**

The Contractor shall:

4.1 Have a minimum of three (3) consecutive years of experience providing aftermarket garbage body parts within the last five (5) years to organizations similar in size and scope to the City.

4.2 Comply with all Federal, State, and local codes, rules, and regulations concerning safety requirements.

**5. CONTRACTOR'S RESPONSIBILITIES**

**5.1 General**

The Contractor shall:

5.1.1 Provide a single point of contact and relevant contact information (name, phone number email,) for receiving orders from the City within five (5) working days of request by the City, or at a time mutually agreed to between the Contractor and the Contract Manager.

5.1.2 Notify the Contract Manager of recall notices, warranty replacements, safety notices, or any applicable notice regarding all City purchased parts within two (2) weeks of publication.

**CITY OF AUSTIN**  
**SCOPE OF WORK**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

- 5.1.3 Provide a report for the Contract Manager of all parts purchased for a specified timeframe (monthly, yearly, etc.) within five (5) business days upon request by an authorized City representative of the department, or at a time mutually agreed to between the Contractor and the authorized City representative. The City prefers that the report be in a sortable electronic or other City-approved format.
  - 5.1.3.1 The City prefers that the report itemizes parts by date purchased, invoice number, part number, part description, price per part, requesting Service Center, and the total dollar amount for all parts purchased.

**5.2 Parts**

**5.2.1 General**

The Contractor shall:

- 5.2.1.1 Provide new aftermarket parts for the specified vehicles/equipment.
  - 4.2.1.1.1 Used, factory seconds, shopworn, demonstrator, prototype, and discontinued parts or materials are not acceptable.
  - 4.2.1.1.2 Remanufactured or rebuilt parts may be used if new parts are not available or if the City requests them in writing (e.g. email).
- 4.2.1.2 Have an adequate parts inventory 95% of the time to fill part orders within the timeframe stipulated in this Scope of Work.
- 4.2.1.3 Provide a minimum of a 12-month warranty or the standard period as provided by the manufacturer, whichever is for the greatest length of time, for defects in material and workmanship.
  - 4.2.1.3.1 The warranty period for all parts shall start when the part is installed on the City vehicle/equipment as evidenced by the City work order.
  - 4.2.1.3.2 This warranty shall provide for replacement parts and shall include Contractor pick up of the defective part and Contractor delivery of the replacement part at no additional cost.
- 4.2.1.4 Guaranty that the parts provided shall not void any existing manufacturer's warranty for City vehicles/equipment.
- 4.2.1.5 Provide a copy of the manufacturer's parts warranty within five (5) working days of request by an authorized City representative.
- 4.2.1.6 Understand all parts for City inventory shall be ordered on an as-needed basis.
- 4.2.1.7 Maintain a stock level equivalent to two (2) weeks supply of inventory. The Contractor and Contract Manager will develop and mutually agree on a parts list and associated supply levels to maintain the two (2) weeks supply within one (1) month of contract award and within one (1) month of request, or at a time mutually agreed to between the Contractor and Contract Manager.
- 4.2.1.8 Provide confirmation of the shipment quantity within two (2) hours after the City places an order to the requesting authorized City representative by e-mail or telephone. The City will order parts by e-mail, fax, or telephone from the Contractor

**CITY OF AUSTIN**  
**SCOPE OF WORK**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

and identify the part number, part description, quantity, delivery requirements and a unique delivery order number.

4.2.1.9 Ship complete orders for parts unless arrangements for partial shipments are made in advance with the requesting authorized City representative. Each shipped order shall include an invoice showing the part number, description, quantity, and unit price for each item.

4.2.1.10 Deliver Parts to the ordering Service Center as indicated below.

4.2.1.10.1 Stock Parts shall be delivered within two (2) working days of specified request by the ordering Service Center. If delivery cannot be made as, the Contractor shall notify the ordering Service Center and provide an estimated delivery date.

4.2.1.10.2 Non-Stock Parts shall be delivered within three (3) working days of request by the ordering Service Center. If delivery cannot be made as specified, the Contractor shall notify the ordering Service Center and provide an estimated delivery date.

4.2.1.10.3 Backordered Parts shall be delivered as specified in the estimate, or at a time mutually agreed upon by both parties.

4.2.1.10.4 Special Order Parts shall be delivered as specified in the estimate, or at a time mutually agreed upon by both parties.

#### **4.3 Code Red Parts Orders**

4.3.1 Code Red orders require immediate shipping with overnight delivery. Shipping charges will not be paid for Code Red orders not delivered accordingly.

4.3.1.1 The delivery order will specify "Code Red"

4.3.1.2 The Contractor shall include the term "Code Red" on invoices when the City authorizes and specifies "Code Red" on the delivery order.

4.3.1.3 The Contractor may assess an expedited shipping charge (e.g. FedEx, UPS, Priority Mail) for any "Code Red" orders placed by the City.

4.3.1.4 The Contractor shall provide a written receipt from the shipper showing the actual expedited costs for all Code Red shipments without any additional markups with the associated invoice.

4.3.2 Provide an emergency point of contact and relevant contact information (name, cell and office phone numbers, email) who is on-call 24 hours daily including weekends and holidays to the Contract Manager upon request by the City, or at a time mutually agreed to between the Contractor and the Contract Manager. The Contractor shall notify the Contract Manager of any changes to the emergency point of contact.

#### **5. CITY REQUIREMENTS**

The City will:

5.1 Provide the Contractor with name(s) of personnel authorized to order parts within one month of Contract effective date.

**CITY OF AUSTIN**  
**SCOPE OF WORK**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

- 5.2 Contact the Contractor by e-mail or telephone to place an order for parts.
- 5.2.1 The order will include the part number, part description, quantity, delivery requirements and a unique delivery order number.
- 5.3 Identify a Code Red delivery request in writing and the number of days to deliver the parts to the requesting Service Center at the time of order.
- 5.4 The City reserves the right to inspect the Contractor's, or the Contractor's Subcontractor's aftermarket garbage body parts inventory and/or facility as specified in the Pre-Award and Post-Award paragraphs in the Scope of Work.

**6. DELIVERY REQUIREMENTS**

- 6.1 Delivery shall be made as specified in the Scope of Work after the order is placed. See Fleet Delivery Locations and Contacts for delivery locations. All orders must be shipped complete unless arrangements for partial shipments are made in advance.
- 6.2 Unless requested by the City, deliveries shall not be made on City-recognized legal holidays (see Contract Terms and Conditions).
- 6.3 The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the description of each item, quantity, and unit price.
- 6.4 No additional delivery charges (FedEx, UPS, etc.) will be paid by the City for any shipment unless the delivery order specifically states "Code Red" and "Code Red" is noted on the invoice. (NOTE: The term "Code Red" means that there is a critical need for the shipment such that the City is willing to pay expedited shipping charges for delivery.

**7. INVOICES and PAYMENT:**

- 7.1 Invoices shall contain a unique invoice number and the information required in the Contract Terms and Conditions. Invoices received without all required information cannot be processed and will be returned to the vendor. Additionally, invoices shall include, as applicable, the following information: A unique Purchase or Delivery Order Number, the following information: Parts numbers and descriptions, quantities for each size tire needing to be retreaded and/or repaired, prices for each size tire retreaded and/or repaired, documentation to support all charges to the City, the Contractor's business name, "remit to" name and address, and the taxpayer identification number. The taxpayer identification number on the invoice must exactly match the information in the Vendor's registration with the City.
- 7.2 Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Fleet Services cannot process payments to or for a Third Party on behalf of the Contractor until the Third Party has been approved by the City and included in the Vendor's registration with the City.
- 7.3 Invoices shall be mailed to the Fleet Service Tire Shop that placed the order (See Fleet Delivery Locations and Contacts for delivery location).
- 7.4 Monthly statements shall be mailed to the below address:

	City of Austin
Department	Fleet Mobility Services
Attn:	Accounts Payable

**CITY OF AUSTIN**  
**SCOPE OF WORK**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

Address	6800 Burleson Road, Bldg. 312, Suite 165
City, State Zip Code	Austin, TX 78744

- 7.5 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.
- 7.6 Final invoices at the end of the Contract must be received at the Fleet Service Center that placed the order within thirty (30) calendar days after the Contract expiration date to be considered for payment. No exceptions to this 30-day submission requirement will be considered.

**8. DESIGNATION OF KEY PERSONNEL:**

The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor shall promptly notify the City and obtain approval for the replacement. Such approval shall not be unreasonably withheld. The Contractor's and City's key personnel are identified as follows:

	<u>Name</u>	<u>Phone Number</u>	<u>Email Address</u>
Contractor Contract Manager			
City Contract Manager	Steve Orwick	512-974-1768	<a href="mailto:Steve.Orwick@austintexas.gov">Steve.Orwick@austintexas.gov</a>
City Project Manager	Perry Been	512-974-2629	<a href="mailto:Perry.been@austintexas.gov">Perry.been@austintexas.gov</a>
City Contract Administrator, Procurement Specialist	John Besser	512-974-2261	<a href="mailto:John.besser@austintexas.gov">John.besser@austintexas.gov</a>

**9. MATERIALS SPECIFICATIONS/DESCRIPTIVE LITERATURE:**

- 9.1 If a solicitation refers to a Qualified Products List (QPL), Standard Products List (SPL) or a manufacturer's name and product, any Offeror offering products not referenced in the solicitation must submit as part of their Offer or within three (3) business days of the City's request, Offer materials specifications/descriptive literature for the non-referenced product. Materials specifications/descriptive literature must be identified to show the item(s) in the Offer to which it applies.
- 9.2 Materials specifications/descriptive literature are defined as product manufacturer's catalog pages, "cut sheets" applicable tests results, or related detailed documents that specify material construction, performance parameters, and any industrial standards that are applicable such as ANSI, ASTM, ASME, SAE, NFPA, NBS, EIA, ESL, and NSA. The submitted materials specifications/descriptive literature must include the manufacturer's name and product number of the product being offered.
- 9.3 The failure of the materials specifications/descriptive literature to show that the product offered conforms to the requirements of the Solicitation shall result in rejection of the Offer.

**CITY OF AUSTIN**  
**SCOPE OF WORK**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

- 9.4 Failure to submit the materials specifications/descriptive literature as part of the Offer or within three (3) business days of the City's request, may subject the Offer to disqualification from consideration for award.

**10. VERIFICATION OF CONTRACTOR'S PARTS PRICING**

- 10.1 City personnel will review invoices to determine the accuracy of charges invoiced. The review will be performed using the Pricing Submittal in effect at the time of Contract award, revisions approved by the City, and the percentage mark up or discount as indicated on the Pricing Submittal.
- 10.2 If pricing is found to be different, the Contractor shall reimburse the City for the amount overcharged within thirty (30) calendar days after written notification from the Contract Manager.

**11. PRICING REQUIREMENTS - SPECIFIED ITEMS**

- 11.1 The Section 1 Items listed in the Pricing Submittal represent the most frequently ordered items. This list of parts is an annual estimate of Specified Parts that may be purchased under the resultant contract.
- 11.2 All Offerors must submit firm fixed pricing for the Specified Items for each twelve (12) months of the Contract. These prices may only be adjusted on the anniversary date of the Contract solely for the purpose of accommodating changes in the Contractor's direct costs.
- 11.3 Changes resulting from verifiable cost trends shall be made in accordance with the Economic Price Adjustment provision included in the Standard Terms and Conditions.

**12. PRICING REQUIREMENTS – NON-SPECIFIED PARTS PRICING**

- 12.1 The City may purchase additional items that are available from the Contractor in various quantities using the Price List (s) identified in Section 3 of Pricing Submittal under the Non-Specified Parts Pricing Section.
- 12.2 Offerors shall quote a percentage discount from a Published Price List for all offered items to be covered in the Contract. The discount shall remain firm during the life of the Contract.
- 12.3 Two (2) copies of the list upon which the discounts are based shall be submitted within three (3) business days request of the City. All price lists identified in the Offer shall clearly include the Offeror's name and address, the solicitation number, prices, title of the price list and number, and the latest effective date of the price list. If the Offer is based on a discount to a manufacturer's price list, the price list must also include the manufacturer's name, the manufacturer's latest effective date, and the manufacturer's price schedule. All price lists submitted become part of the Offer.
- 12.4 The price list may be superseded or replaced during the Contract term only if price revisions are the result of the manufacturer's official price list revision. Written notification from the Contractor of price changes, along with two (2) copies of the revised list must be submitted to the Contract Manager with the effective date of change to be at least 30 calendar days after written notification. The City reserves the right to refuse any list revision.
- 12.5 The percentage discounts listed in the Non-Specified Parts pricing section shall be fixed throughout the term of the Contract and are not subject to increase.
- 12.6 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.



**CITY OF AUSTIN**  
**SCOPE OF WORK**  
**DESCRIPTION: AFTERMARKET PARTS FOR GARBAGE TRUCK BODIES**  
**SOLICITATION NO.: IFB 7800 JSB1006**

**13. PRE-AWARD**

- 13.1 Prior to awarding a Contract, the City reserves the right to visit the premises of any Offeror being considered for a Contract. The site visit will be made during the evaluation process to determine whether or not the Offeror has the appropriate facilities, equipment, inventory, licenses, registrations, permits, and qualified personnel to perform according to the Scope of Work. Offerors, who in the City's opinion, do not have the resources to meet the Scope of Work requirements, will not be considered for Contract award regardless of their Bid price. The Offeror shall furnish, or cause to be furnished, without additional charge, all reasonable assistance to the City to facilitate the site visit.

**14. POST-AWARD**

- 14.1 The Contractor may be required to attend a post award meeting with City personnel within thirty (30) calendar days after Contract award. The purpose of the meeting is to discuss the terms and conditions of the Contract.
- 14.2 The City may perform site visits during the term of the Contract to verify that the Contractor, or the Contractor's Subcontractor, has the appropriate facilities, equipment, inventory, licenses, registrations, permits, and qualified personnel to perform according to the Scope of Work. The Contractor or the Contractor's Subcontractor shall furnish, or cause to be furnished, without additional charge, all reasonable assistance to the City to facilitate the site visit.

**CITY OF AUSTIN  
FLEET SERVICES  
DELIVERY LOCATIONS AND POINTS OF CONTACT**

**Service Center #1**

Keith Barrington, Manager  
Greg Redden, Supervisor – 1<sup>st</sup> shift  
Joseph Jenkins, Supervisor – 2<sup>nd</sup> shift  
Vacant, Supervisor – 3<sup>rd</sup> shift  
Matt Andrews, Service Consultant – 1<sup>st</sup> shift  
Ryan Knelleken, Service Consultant – 2<sup>nd</sup> shift  
6301-A Harold Court  
Austin, Texas 78721

[servicecenter1DL@austintexas.gov](mailto:servicecenter1DL@austintexas.gov)

Main Tel. No. (512) 974-1703 / Fax: (512) 974-2233

**Service Center #5**

Ric Calvino, Acting Manager  
Johnny Easley, Supervisor – 1<sup>st</sup> shift  
Jesus Ruiz, Supervisor – 2<sup>nd</sup> shift  
Robert Muller, Supervisor – 3<sup>rd</sup> shift  
Rafferty Brewer-Vogt, Service Consultant – 1<sup>st</sup> shift  
Chris Crossland, Service Consultant – 2<sup>nd</sup> shift  
Vacant, Service Consultant – 3<sup>rd</sup> shift  
714 East 8<sup>th</sup> Street  
Austin, TX 78701

[servicecenter5DL@austintexas.gov](mailto:servicecenter5DL@austintexas.gov)

Main Tel. No.: (512) 974-1804 / Fax No.: (512) 322-9909

**Service Center #6**

Merritt Jason Pratt, Manager  
Vacant, Supervisor – 1<sup>st</sup> shift  
Paul Conde, Supervisor – 2<sup>nd</sup> shift  
Michael Calnan, Service Consultant – 1<sup>st</sup> shift  
Carlos Ibarria, Service Consultant – 2<sup>nd</sup> shift  
1182 Hargrave St.  
Austin, TX 78702

[servicecenter6DL@austintexas.gov](mailto:servicecenter6DL@austintexas.gov)

Main Tel. No.: (512) 974-1742 / Fax No.: (512) 974-9156

**Service Center #8**

Vacant, Manager  
Robert Opheim, Supervisor – 1<sup>st</sup> shift  
Adrian Alejo, Supervisor – 2<sup>nd</sup> shift  
Richard Fitch, Service Consultant  
Richard Zapata, Service Consultant  
4411-D Meinardus Rd.  
Austin, TX 78745

[servicecenter8DL@austintexas.gov](mailto:servicecenter8DL@austintexas.gov)

Main Tel. No.: (512) 974-3075 / Fax No.: (512) 416-1635

**Service Center #11**

Kevin Brown, Manager  
Craig Subbert, Supervisor – 1<sup>st</sup> shift  
Vacant, Supervisor – 2<sup>nd</sup> shift  
George Toposna, Service Consultant  
6301-J Harold Court  
Austin, TX 78721

[servicecenter11DL@austintexas.gov](mailto:servicecenter11DL@austintexas.gov)

Main Tel. No.: (512) 974-2389 / Fax No.: (512) 974-9055

**Parts Room - Service Center #1**

**Amy Arredondo, Stores Coordinator** (512) 974-1759  
Jose Herrera (512) 974-1772  
(512) 974-2756

Email: [amy.arredondo@austintexas.gov](mailto:amy.arredondo@austintexas.gov)

**Parts Room - Service Center #5**

**Edward Kinch, Stores Coordinator** (512) 974-1889  
Gilbert Rodriguez (512) 974-1841  
Rey Degollado (512) 974-1813

Email: [edward.kinch@austintexas.gov](mailto:edward.kinch@austintexas.gov)

**Parts Room - Service Center #6**

**Gordon McClendon, Stores Coordinator** (512) 974-9162  
Daniel Ramirez (512) 974-1743

Email: [daniel.ramirez@austintexas.gov](mailto:daniel.ramirez@austintexas.gov)

**Parts Room - Service Center #8**

**Luis Velez, Stores Coordinator** (512) 974-3029  
Raymond Solis (512) 974-2687  
Christopher Alvarez (512) 974-4319

**Parts Room - Service Center #11**

**Mike Maharidge, Stores Coordinator** (512) 974-9022

Email: [mike.maharidge@austintexas.gov](mailto:mike.maharidge@austintexas.gov)

**CITY OF AUSTIN  
FLEET SERVICES  
DELIVERY LOCATIONS AND POINTS OF CONTACT**

**Service Center #12**

Kevin Brown, Manager  
Vacant, Supervisor  
Graham Ware, Service Consultant  
4108 Todd Lane  
Austin, TX 78744

[servicecenter11DL@austintexas.gov](mailto:servicecenter11DL@austintexas.gov)

Main Tel. No.: (512) 974-4368 / Fax No.: (512) 974-4328

**Parts Room - Service Center #12**

**Juan Sanchez, Stores Coordinator** (512) 974-1763

Email: [juan.sanchez@austintexas.gov](mailto:juan.sanchez@austintexas.gov)

**Service Center #13**

James Forman, Manager  
Vacant, Supervisor – 1<sup>st</sup> shift  
Vacant, Supervisor – 2<sup>nd</sup> shift  
Larry Knight, Service Consultant – 1<sup>st</sup> shift  
Eddie Raymond, Service Consultant – 2<sup>nd</sup> shift  
2412 Kramer Lane, Bldg. A  
Austin, TX 78758

[servicecenter13DL@austintexas.gov](mailto:servicecenter13DL@austintexas.gov)

Main Tel. No.: (512) 978-2340 / Fax No.: (512) 978-2350

**Parts Room - Service Center #13**

**Glenn Losbaker, Stores Coordinator** (512) 978-2341  
(512) 978-2342

Email: [glenn.iosbaker@austintexas.gov](mailto:glenn.iosbaker@austintexas.gov)

**Materials Control**

6301-K Harold Court  
Austin, Texas 78721

**Lonnie Jones, Materials Control Supervisor**

Assigned Service Centers:

Parts Rooms SC 1, 11, 12, Tire Shop

Office (512) 974-1744

Email: [lonnie.jones@austintexas.gov](mailto:lonnie.jones@austintexas.gov)

**Henry Guerra, Materials Control Supervisor**

Assigned Service Centers

Parts Rooms 5, 6, 8, 13

Office (512) 974-1547

Email: [henry.guerra@austintexas.gov](mailto:henry.guerra@austintexas.gov)

**Fleet Tire Shop**

**Daniel Dominquez, Stores Coordinator**

6301-K Harold Court  
Austin, TX 78721

Email: [daniel.dominquez@austintexas.gov](mailto:daniel.dominquez@austintexas.gov)

Main Tel. No.: (512) 974-1788

**Fleet Administration - Contracts & Contract Compliance**

6800 Burleson Road, Bldg. 312, Ste. 165  
Austin, TX 78744

**Hazel Black, Contract Management Supervisor I**

(512) 974-1751 Fax: (512) 974-1769

[hazel.black@austintexas.gov](mailto:hazel.black@austintexas.gov)

**Perry Been, Contract Management Specialist III**

(512) 974-2629 Fax: (512) 974-1769

[perry.been@austintexas.gov](mailto:perry.been@austintexas.gov)

**Molly Strickland, Contract Management Specialist III**

(512) 974-1749 Fax: (512) 974-1769

[molly.strickland@austintexas.gov](mailto:molly.strickland@austintexas.gov)

**Vacant position, Contract Management Specialist II**

(512) 974-1532 Fax: (512) 974-1769

**Steve Orwick, Contract Management Specialist I**

(512) 974-1768 Fax: (512) 974-1769

[steve.orwick@austintexas.gov](mailto:steve.orwick@austintexas.gov)



**PRICE SUBMITTAL  
CITY OF AUSTIN  
AFTERMARKET PARTS FOR GARBAGE BODIES**

SOLICITATION NO.: **IFB 7800 JSB1006**

BUYER: **John Besser**

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

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

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

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

The City may award a Bidder the entire contract, the majority of the contract, or select line items

Part numbers that are listed here are those available to the City at the time of issuance. Offerors shall notify the City of alternate part numbers as a direct result of obsolete or superceded part numbers prior to the solicitation due date.

**SECTION 1 -- SPECIFIED ITEMS (MOST FREQUENTLY ORDERED ITEMS)**

Bidder shall be able to provide aftermarket repair parts for various models of garbage bodies including Heil, Pakmor, Wayne and McNellis.

The parts and quantities listed herein are estimates. The City reserves the right to purchase more or less of these quantities as may be required during the Contract Term. Quantities will be as needed and specified by the City for each order.

LINE ITEM	DESCRIPTION	MANUFACTURER'S PART NUMBER	UNIT	ESTIMATED ANNUAL QUANTITY	MANUFACTURER'S UNIT PRICE	PERCENT DISCOUNT OFF PRICE LIST (use negative number)	DISCOUNTED UNIT PRICE OFFERED TO THE CITY	EXTENDED PRICE
1.1	Petersen Bucket Jaw Assembly	102132	EA	2	\$1,703.44	-5%	\$1,618.27	\$3,236.54
1.2	PB Loader Weldment Front Loader Arm	197600	EA	2	\$4,725.95	-5%	\$4,489.65	\$8,979.31
1.3	PAKMOR Valve Sweep	2010211	EA	2	\$3,733.33	-5%	\$3,546.66	\$7,093.33
1.4	PB Loader Tilt Shovel & Clam Assy	197539A	EA	1	\$16,782.05	-5%	\$15,942.95	\$15,942.95
1.5	PB Loader Link Cylinder	1977-11	EA	4	\$481.84	-5%	\$457.75	\$1,830.99
1.6	Perkins Cart Tipper Assy	D6080C	EA	6	\$3,739.08	-5%	\$3,552.13	\$21,312.76
1.7	Perkins Motor Tipper	D73031	EA	2	\$2,366.31	-5%	\$2,247.99	\$4,495.99
<b>TOTAL EXTENDED PRICE -SECTION 1</b>								<b>\$62,891.85</b>

**SECTION 2 -- DELIVERY CHARGE FOR CODE RED ITEMS ONLY**

This information will not be used in the evaluation of the bid but is for informational purposes only and there is no guarantee of purchase.

LINE ITEM	DESCRIPTION	ESTIMATED ANNUAL QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
2.1	"CODE RED" SHIPPING CHARGES	5	EA	AT COST (NO ADDITIONAL MARKUP)	



**SECTION 3 -- NON-SPECIFIED PARTS PRICING**

The City wishes to purchase aftermarket parts for Heil, Wayne, PAKMOR and McNellis garbage bodies. In recognition of the City's repair needs the City estimates spending approximately \$12,000 annually on these parts in addition to those listed in Section 1. The prices for these parts shall be based on the Price List(s) and percentage discount(s) as indicated below. **Be advised, Bidder must respond to each line item in this section in order to be considered Responsive to the Solicitation.**

The percentage discount(s) shall be fixed throughout the term of the Contract including any subsequent renewal periods, and are not subject to increase. Bidder shall provide the manufacturer(s) of the parts, the name and number of the identified price list(s), the latest effective date of the identified price list(s) and the percentage discount(s) to the identified price list(s). Please include all manufacturers price lists that could contribute to the Contract. Attach additional sheets as necessary.

LINE ITEM	MANUFACTURER OF THE PARTS	ESTIMATED ANNUAL SPEND	LATEST EFFECTIVE DATE OF PRICE LIST	MINIMUM DISCOUNT TO MANUFACTURER'S PRICE LIST (use a negative number)		EXTENDED TOTAL
2.1	Peterson	\$3,000.00	5/26/2021	-5%		\$2,850.00
2.2	PB Loader	\$3,000.00	5/26/2021	-5%		\$2,850.00
2.3	Perkins	\$3,000.00	5/26/2021	-5%		\$2,850.00
2.4	Pakmor	\$3,000.00	5/26/2021	-5%		\$2,850.00
ANNUAL ESTIMATED SPEND -SECTION 3						\$11,400.00

TOTAL EXTENDED PRICE FOR SECTIONS 1 THROUGH 3:	\$74,291.85
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DELIVERY TERMS: FOB Destination, Freight Pre-paid and Allowed

DELIVERY METHOD: COMMON CARRIER (FedEx, UPS) \_UPS, USPS, AAA COOPER, SMT\_ \_VENDOR STAFF\_ MATTHEW OLINICK\_

COMPANY NAME: \_TEXAS PACK + LOAD\_

EMAIL ADDRESS: \_MOLINICK@TEXASPACKANDLOAD.COM\_

**NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION**

**Instruction.** Offerors shall read and acknowledge this certification by checking the box below. Offerors that do not check the box below indicating their compliance with this certification shall be determined nonresponsive.



(Check)

**OFFEROR HEREBY CERTIFIES**

Offeror has read the following and will comply with Austin City Code, Sec. 5-4-2.

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 Non-Discrimination and Non-Retaliation Policy set forth below.



**MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICY**

1. 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.
2. 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.
3. 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.
4. Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and nonretaliation 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.
5. UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NONDISCRIMINATION 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.
6. Contractor agrees 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.
7. The Contractor agrees that this 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.

SUSPENSION AND DEBARMENT CERTIFICATION

**Instruction.** Offerors shall read and acknowledge this certification by checking the box below. Offerors that do not check the box below indicating their compliance with this certification shall be determined nonresponsive.



(Check)

**OFFEROR HEREBY CERTIFIES**

Offeror has **NOT** been debarred from contracting with the City of Austin, any other local governments or states, or the US federal government.

**Suspended or Debarred Offerors.** The City finds that offerors, including any subcontractors that may be included in the Offer, that are suspended or debarred from contracting with the US federal government, any state or local government, as of the submission date of their offer, are not sufficiently responsible to contract with the City. The City may reject and set aside any offer, or terminate for cause any contract resulting from an offer, in which the offeror falsely certified they were not suspended or debarred when in fact they were.



## NON-COLLUSION AND NON-CONFLICT OF INTEREST CERTIFICATION

**Instruction.** Offerors shall read and acknowledge this certification by checking the box below. Offerors that do not check the box below indicating their compliance with this certification shall be determined nonresponsive.

**OFFEROR HEREBY CERTIFIES**

Offeror has **NOT** engaged in collusion and is not aware of any conflicts of interests as described below.

**Offeror.** The term "Offeror", as used in this document, includes the individual or business entity submitting the Offer. For the purpose of this Affidavit, an Offeror includes the directors, officers, partners, managers, members, principals, owners, agents, representatives, employees, other parties in interest of the Offeror, and any person or any entity acting for or on behalf of the Offeror, including a subcontractor in connection with this Offer.

**Anti-Collusion Statement.** Offeror has not in any way directly or indirectly:

- a. colluded, conspired, or agreed with any other person, firm, corporation, Offeror or potential Offeror to the amount of this Offer or the terms or conditions of this Offer.
- b. paid or agreed to pay any other person, firm, corporation Offeror or potential Offeror any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached Offer or the Offer of any other Offeror.

**Preparation of Solicitation and Contract Documents.** Offeror has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Solicitation or Contract documents. In addition, the Offeror has not otherwise participated in the preparation or development of the underlying Solicitation or Contract documents, except to the extent of any comments or questions and responses in the solicitation process, which are available to all Offerors, so as to have an unfair advantage over other Offerors, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.

**Participation in Decision Making Process.** Offeror has not participated in the evaluation of Offers or other decision making process for this Solicitation, and, if Offeror is awarded a Contract no individual, agent, representative, consultant, subcontractor, or sub-consultant associated with Offeror, who may have been involved in the evaluation or other decision making process for this Solicitation, will have any direct or indirect financial interest in the Contract, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.

**Present Knowledge.** Offeror is not presently aware of any potential or actual conflicts of interest regarding this Solicitation, which either enabled Offeror to obtain an advantage over other Offerors or would prevent Offeror from advancing the best interests of the City in the course of the performance of the Contract.

**City Code.** As provided in Sections 2-7-61 through 2-7-65 of the City Code, no individual with a substantial interest in Offeror is a City official or employee or is related to any City official or employee within the first or second degree of consanguinity or affinity.

**Chapter 176 Conflict of Interest Disclosure.** In accordance with Chapter 176 of the Texas Local Government Code, the Offeror:

- a. does not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income; Section 0810, Non-Collusion, 1 Revised 12/22/15 Non-Conflict of Interest, and Anti-Lobbying Certification;
- b. has not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$100 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that City is considering doing business with the Offeror; and
- c. does not have a family relationship with a local government officer of the City in the third degree of consanguinity or the second degree of affinity.

ANTI-LOBBYING CERTIFICATION

**Instruction.** Offerors shall read and acknowledge this certification by checking the box below. Offerors that do not check the box below indicating their compliance with this certification shall be determined nonresponsive.



(Check)

**OFFEROR HEREBY CERTIFIES**

Offeror has and will continue to comply with the City's Anti-Lobbying Ordinance, Chapter 2-7, Article 6.

**Applicability.** This Solicitation is subject to City Code, Ch. 2-7, Article 6, Anti-Lobbying and Procurement.

**No Lobbying Period.** The No-Lobbying Period begins on the date this Solicitation was initially published and continues through the earlier of (i) 60-days following Council authorization of any contracts resulting from this Solicitation, (ii) the date the last resulting contract is signed, (iii) the date this Solicitation is cancelled.

**Prohibited Communications.** During the No Lobbying Period, Respondents to this Solicitation or their Agents, shall not make prohibited communications to City officials or City employees.

**Ordinance.** [https://www.austintexas.gov/financeonline/afo\\_content.cfm?s=15&p=145](https://www.austintexas.gov/financeonline/afo_content.cfm?s=15&p=145)

**Rules.** [https://www.austintexas.gov/financeonline/afo\\_content.cfm?s=16&p=77](https://www.austintexas.gov/financeonline/afo_content.cfm?s=16&p=77)



## NONRESIDENT BIDDER AND MANUFACTURING CERTIFICATION

**Instruction.** Offerors shall read and checking the applicable boxes in response to both certifications below.

☐ YES ☒ NO  
(Check One)

**OFFEROR HEREBY CERTIFIES**

Offeror **IS (YES)** or **IS NOT (NO)** a Nonresident Bidder in accordance with Texas Government Code Ch. 2252.002.

If "Yes" is checked, provide the name of the state where  
Nonresident Bidder's Principle Place of Business is located.

Select State

(State)

☒ YES ☐ NO  
(Check One)

**OFFEROR HEREBY CERTIFIES**

Offer **INCLUDES (YES)** or **DOES NOT INCLUDE (NO)** Equipment, Supplies and/or Materials in accordance with Texas Government Code Ch. 2252.002

If "YES" is checked, provide the name of the State where majority  
of the Equipment, Supplies and/or Materials were manufactured

Select State

(State or Country if outside the United States)

**Reciprocal Preference.** In accordance with Texas Government Code Ch. 2252.002 (see below), the City must apply a reciprocal preference to a Nonresident Bidder's offer, consistent with the applicable preference granted by the state of the Nonresident Bidder's principal place of business. The City will also apply a reciprocal preference to a Resident Bidder or Nonresident Bidder's offer, consistent with the applicable preference granted by the state where the majority of the equipment, supplies and/or materials were manufactured.

**Resident bidder.** An Offeror whose principal place of business is in Texas, including a contractor whose ultimate parent company or majority owner has its principal place of business in Texas.

**Nonresident Bidder.** An Offeror that is not a Resident Bidder.

**Statute:** <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2252.htm>

## LOCAL PRESENCE CERTIFICATION – OPTIONAL

**Instruction.** Offerors wishing to claim Local Presence shall read and acknowledge this certification by checking the applicable box and providing the physical address below.

**OFFEROR HEREBY CERTIFIES**

Offeror's **HEADQUARTERS** or a **BRANCH OFFICE** is within the Austin Corporate City Limits.

☒ **HEADQUARTERS**☐ **BRANCH OFFICE**

(Check One)

**1030 BRUSSELS ST / SAN ANTONIO, TX 78219**

(Physical Address of Offeror's Headquarters or Branch Office)

**Benefit to the City.** It is the City's policy that contracts with Offerors with Local Presence provides additional economic development opportunities including employment of City residents or increasing City tax revenues.

**Local Presence.** Offerors may claim Local Presence if at least one (1) of the following are located within the Austin Corporate City Limits, employing residents of Austin.

1. Headquarters; or
2. Branch office.

**Austin Corporate City Limits.** The City of Austin's Full Purpose Jurisdiction, not including the City's Extraterritorial Jurisdiction.

**Headquarters.** The Offer's administrative center where most of the company's important functions and full responsibility for managing and coordinating the business activities of the firm are located.

**Branch Office.** An office other than the Offeror's headquarters, that has been in place for at least five (5) years, where those persons that will be responsible for the provision of the goods and services described in this solicitation are located.

**Subcontractors.** Offerors may also claim Local Presence for any subcontractors included in their offer.

The same as Offerors, Subcontractors have Local Presence if either their Headquarters or Branch Office is located within the Austin Corporate City Limits. Local Presence for Subcontractors can only be claimed within the attached Compliance Plan OR Subcontractor Plan, and subject to further requirements including good faith efforts to subcontract with City certified Minority and Women-owned Business Enterprises. The City will not grant any Local Presence for proposed subcontractors if the Subcontract Plan is incomplete or is found to be inaccurate.



## SUBCONTRACTING UTILIZATION FORM

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	Texas Pack + Load
City Vendor ID Code	V0000959700
Physical Address	1030 Braxtons St
City, State Zip	San Antonio, TX 78219
Phone Number	210-239-2282
Email Address	molinick@texaspackandload.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.

*Mattew Olivick / Operations Manager*

*Mattew Olivick 5/26/20*

Name and Title of Authorized Representative (Print or Type)

Signature/Date



## SUBCONTRACTING UTILIZATION PLAN

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](mailto: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](mailto:SMBRComplianceDocuments@austintexas.gov)) to obtain a list of City of Austin certified M/WBE firms that are certified to provide the goods and services the Offeror intends to subcontract out. (Availability List). Offerors shall document their contact(s) with SMBR in the "SMBR Contact Information" table on the following page.

☐ **Contact M/WBE firms.** Offerors shall contact all of the M/WBE firms on the Availability List with a Significant Local Business Presence which is the Austin Metropolitan Statistical Area, to provide information on the proposed goods



and services proposed to be subcontracted and give the Subcontractor the opportunity to respond on their interest to bid on the proposed scope of work. When making the contacts, Offerors shall use at least two (2) of the following communication methods: email, fax, US mail or phone. Offerors shall give the contacted M/WBE firms at least seven days to respond with their interest. Offerors shall document all evidence of their contact(s) including: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.

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

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

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

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

Subcontractor/Sub-consultant	
City of Austin Certified	<input type="checkbox"/> MBE <input type="checkbox"/> WBE Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Company Name	N/A
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	N/A
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
N/A		<input type="checkbox"/> Phone OR <input type="checkbox"/> Email	

**FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:**

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

\_\_\_\_\_  
Reviewing Counselor\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Director/Assistant Director or Designee\_\_\_\_\_  
Date





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

**Solicitation: IFB 7800 JSB1006**

**Addendum No: 1**

**Date of Addendum: 05/21/2020**

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

**I. Clarifications:** Revise Standard Instructions, as provided below:

**IA. Add new Paragraph 6.6:**

**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 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.

**IB. Revise Paragraph 7.1:**

**Award Determination.** The City will award the contract to the responsible Offeror submitting the low responsive bid. *If the City receives a 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.*

**II. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.**

ACKNOWLEDGED BY:

Matthew Olivick  
Name

Matthew Olivick  
Authorized Signature

5/26/20  
Date

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

## GOAL DETERMINATION REQUEST FORM

<b>Buyer Name/Phone</b>	John Besser - 512-974-2261	<b>PM Name/Phone</b>	Hazel Black 512-974-1751
<b>Sponsor/User Dept.</b>	Fleet	<b>Sponsor Name/Phone</b>	Hazel Black 512-974-1751
<b>Solicitation No</b>	134361	<b>Project Name</b>	Aftermarket Garbage Body Parts
<b>Contract Amount</b>	\$387,000	<b>Ad Date (if applicable)</b>	N/A
<b>Procurement Type</b>			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input type="checkbox"/> IFB – IDIQ <input type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Critical Business Need <input type="checkbox"/> Sole Source* <input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – JOC <input type="checkbox"/> PS – Project Specific <input checked="" type="checkbox"/> Commodities/Goods <input type="checkbox"/> Interlocal Agreement <input type="checkbox"/> AD – Design Build <input type="checkbox"/> IFB – Construction <input type="checkbox"/> PS – Rotation List <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Ratification			
<b>Provide Project Description**</b>			
Request for a Master Agreement for Aftermarket Garbage Body Parts			
<b>Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.</b>			
IFB 7800 JRD0020 - No goals were established.			
<b>List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)</b>			
06575 REFUSE/GARBAGE COLLECTION BODIES AND PARTS - 100%			
John Besser		04/22/2020	
<b>Buyer Confirmation</b>		<b>Date</b>	

\* Sole Source must include Certificate of Exemption

\*\*Project Description not required for Sole Source

<b>FOR SMBR USE ONLY</b>			
<b>Date Received</b>	4/23/2020	<b>Date Assigned to BDC</b>	4/23/2020
<b>In accordance with Chapter2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:</b>			
<input type="checkbox"/> Goals	% MBE	% WBE	
<input type="checkbox"/> Subgoals	% African American	% Hispanic	
	% Asian/Native American	% WBE	
<input type="checkbox"/> Exempt from MBE/WBE Procurement Program		<input checked="" type="checkbox"/> No Goals	

## GOAL DETERMINATION REQUEST FORM

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

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

*If Other was selected, provide reasoning:*

### MBE/WBE/DBE Availability

· N/A

### Subcontracting Opportunities Identified

· N/A

<b>SMBR Staff</b>	<b>Signature/ Date</b>
Tracy Burkhalter	4/23/2020
<b>SMBR Director or Designee</b> <i>Jessica Oberembt</i>	<b>Date</b> 04/23/2020
<b>Returned to/ Date:</b>	