

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: **Schuler Contracting, LLC dba Heartland Hauling**

Company Address: **1405 E Riverside Dr**

City, State, Zip: **Austin, Texas 78741**

Company's Austin Finance Online Vendor Registration No. Registration No.

Company's Officer or Authorized Representative: **Michelle Schuler**

Title of Officer or Authorized Representative: **Manager**

Email: **Michelle@schulercontracting.com**

Offeror's Phone: **512-637-9722**

Offeror's Signature: Michelle Schuler

Date: **April 26, 2021**

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: MA 2200 NA210000213

Printed Name of City's Authorized Procurement Staff: William J. Toler

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

Signature: William J. Toler
Digitally signed by William J. Toler
Date: 2021.10.01 10:09:56 -05'00'

Date: September 30, 2021

Email: william.toler@austintexas.gov

Phone: 936-218-4781

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

**CITY OF AUSTIN
TERMS AND CONDITIONS**

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 work-hours 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.

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.

**CITY OF AUSTIN
TERMS AND CONDITIONS**

- 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 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:

**CITY OF AUSTIN
TERMS AND CONDITIONS**

- 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.

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.

**CITY OF AUSTIN
TERMS AND CONDITIONS**

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.

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.

**CITY OF AUSTIN
TERMS AND CONDITIONS**

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
- 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.

**CITY OF AUSTIN
TERMS AND CONDITIONS**

- 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, 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.

**CITY OF AUSTIN
TERMS AND CONDITIONS**

- 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:
 - 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.

**CITY OF AUSTIN
TERMS AND CONDITIONS**

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 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

**CITY OF AUSTIN
TERMS AND CONDITIONS**

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 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

**CITY OF AUSTIN
TERMS AND CONDITIONS**

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
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

**CITY OF AUSTIN
TERMS AND CONDITIONS**

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.

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:

**CITY OF AUSTIN
TERMS AND CONDITIONS**

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.

1.42 NON-SPECIFIED ITEMS:

The City may purchase additional related items that are available from the Contractor. Pricing for these non-specified items will be calculated based on a percentage markup over Contractors cost, percentage discount of list price or as otherwise identified in the Price Sheet under the Non-Specified Items Section. The percentage markup or discount shall be fixed throughout the term of the Contract and are not subject to increase. They shall also remain firm through subsequent Contract extension options. The City may request additional information from the Contractor to substantiate the percentage markup or discount prior to placing an order.

1.43 ECONOMIC PRICE ADJUSTMENT:

- A. **Price Adjustments:** Prices shown in this Contract shall remain firm for the first twelve (12) of calendar months of the Contract. After that, in recognition of the potential for fluctuation of the Contractor’s cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the Contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the Solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed (10%) 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.

**CITY OF AUSTIN
TERMS AND CONDITIONS**

- 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 % or \$ of Base Price: 100%	
Database Name: Producer Price Index Industry Data	
Series ID: PCU3279923279920	
<input checked="checked" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: N/A	
Description of Series ID: Ground or treated minerals and earths	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: All	

**CITY OF AUSTIN
TERMS AND CONDITIONS**

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

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

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

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

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
- 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

**CITY OF AUSTIN
TERMS AND CONDITIONS**

in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in 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:

**CITY OF AUSTIN
TERMS AND CONDITIONS**

- a. Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.
 - b. 30 Days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.
 - c. The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.
 - iii. **Business Automobile Liability Insurance:** Coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - a. Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.
 - b. 30 Days' Notice of Cancellation, Endorsement CA0244, or equivalent coverage.
 - c. The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
- C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. 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-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.

**CITY OF AUSTIN
TERMS AND CONDITIONS**

- 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. 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

**CITY OF AUSTIN
TERMS AND CONDITIONS**

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.

2.5 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.

**CITY OF AUSTIN
TERMS AND CONDITIONS**

3 SERVICES

3.1 ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES AND/OR SERVICES:

If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables or Services, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables 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.

3.2 WORKFORCE:

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

3.3 GUARANTEE – SERVICES:

The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices following the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
- B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from final acceptance. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with the services warranty standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within 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.
- C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

**CITY OF AUSTIN
TERMS AND CONDITIONS**

3.4 WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):

- A. Access to the Austin Water Department building by the Contractor, all Subcontractors and their employees will be strictly controlled, at all times, by the City. Security badges will be issued by the Department for this purpose. The Contractor shall submit a complete list of all persons requiring access to the Austin Water building at least 30 days in advance of their need for access. The City reserves the right to deny a security badge to any Contractor personnel for reasonable cause. The City will notify the Contractor of any such denial no more than 20 days after receipt of the Contractor's submittal.
- B. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the Contract, the Contractor shall so notify the City's Contract Manager, in writing, within 10 days of the receipt of notification of denial.
- C. Contractor personnel will be required to check in at the security desk when entering or leaving the Austin Water building and security badges must be on display, at all times, when in the building. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule. Security badges may not be removed from the premises.
- D. Contractor is not required to obtain reports for delivery personnel, including but not limited to FedEx, UPS, Roadway, or other materials delivery persons, however all delivery personnel must present company/employer-issued photo ID and be accompanied by at least one of Contractor's personnel at all times while at the work site.
- E. The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees and Subcontractors are kept fully informed as to these requirements.

**CITY OF AUSTIN
SPECIFICATION FOR
SANDY AND CHOCOLATE LOAM SCREENED
SOLICITATION NO.: 2200 WJT1000**

1. **PURPOSE:**

The Contractor shall provide and deliver Sandy Loam and Chocolate Loam Screened to be used for drainage, backfill and other various projects throughout the City. The contract will be used by the Austin Water (AW) and various City departments. The City reserves the right to add or remove City Departments, locations, services, or adjust frequency as deemed necessary throughout the contract term.

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

2. **TERM OF CONTRACT:**

The term of the contract shall commence upon execution and remain in effect for an initial term of three years (3) with two (2) renewal options.

3. **DELIVERY REQUIREMENTS:**

The Contractor shall deliver to the below locations or the address indicated on the Deliver Order.

Location:

Days:

Glen Bell Service Center

8:00 a.m. thru 2:00 p.m. Monday through Friday

3907 S. Industrial Drive

Austin, Texas 78744

Location:

Days:

North Service Center

8:00 a.m. thru 2:00 p.m. Monday through Friday

907 W. Koenig Lane

Austin, Texas 78756

Location:

Days:

Motheral Yard

8:00 a.m. thru 2:00 p.m. Monday through Friday

11100 Motheral Drive

Austin, Texas 78753

**CITY OF AUSTIN
SPECIFICATION FOR
SANDY AND CHOCOLATE LOAM SCREENED
SOLICITATION NO.: 2200 WJT1000**

Location:

Tim Louviere Service Center
6301-B Harold CT.
Austin, Texas 78721

Days:

8:00 a.m. thru 2:00 p.m. Monday through Friday

Location:

Austin Memorial Park Cemetery
2800 Hancock Blvd
Austin, Texas 78731

Days:

8 a.m. thru 2:00 p.m. M-Fri

- 3.1 The material may be picked up by City in City owned or leased trucks. The material shall be loaded into City owned or lease trucks by Contractor at time specified when order is placed with Contractor.
- 3.2 When material is not picked up by the City, the Contractor shall deliver to City owned storage sites, or to a particular work site. All storage and work sites will be located within the Austin City limits, or within any Extra-Jurisdictional Territory boundaries.
- 3.3 Materials shall be ready for pick-up by the City within two (2) hours notification by the City to the Contractor.
- 3.4 Delivery is to be made within one (1) calendar day after the order is placed (either verbally or in writing) by 9:00 A.M. All orders must be shipped complete unless arrangements for partial shipments are made in advance.
- 3.5 The Contractor shall provide, with each delivery or pick-up, a Shipping or Delivery Ticket showing the description of each item, quantity, and unit price.
- 3.6 The Contractor shall confirm the quantity to be shipped on all orders within two (2) hours of notification from the City in writing and/or in a method and manner as mutually agreed to by the Contractor and the Contract Manger or designee.
- 3.7 The Contractor shall have a manned dispatcher phone number available Monday through Friday, from 7:00 A.M. through 4:00 P.M.
- 3.8 The Contractor shall have a weigh scale (capable of determining the tare weight) at their collections site.
- 3.9 The Contractor's collection site shall have an all-weather road level and graded, free from large potholes, mud pits, shall be located within five (5) miles of the City limits of Austin, Texas, and shall be open an accessible to the City from 7:30 A.M. through 4:00 P.M. Monday through Friday.
- 3.10 Emergency Deliveries shall be made within twenty-four (24) hours after the order is placed or as mutually agreed between the City and the Contractor. The City may require partial deliveries from a single truckload to be made at more than one location. The City will pay the additional freight charge as indicated on the bid sheet; however, this freight charge will not be considered in the award evaluation.

**CITY OF AUSTIN
SPECIFICATION FOR
SANDY AND CHOCOLATE LOAM SCREENED
SOLICITATION NO.: 2200 WJT1000**

4. **INVOICE AND PAYMENT ADDRESS:**

The Contractor shall email or mail itemized invoices to the below address or to the address indicated on the Deliver Order:

	City of Austin
Department:	Austin Water
Attn:	Sandra Hicks
Email:	AWNNorthAP@austintexas.gov

	City of Austin
Department:	Austin Water
Attn:	Audrey Rodriguez
Email:	AWGlenBellAP@austintexas.gov

	City of Austin
Department:	Austin Water
Attn:	Arlene Lozano
Email:	AWTimLouviereAP@austintexas.gov

	City of Austin
Department:	Austin Water
Attn:	Sandra Hicks
Email:	AWNNorthAP@austintexas.gov

	City of Austin
Department:	Austin Water
Attn:	Paul Rutherford
Email:	AWAdminPumping@austintexas.gov

**CITY OF AUSTIN
SPECIFICATION FOR
SANDY AND CHOCOLATE LOAM SCREENED
SOLICITATION NO.: 2200 WJT1000**

	City of Austin
Department:	Watershed Protection
Attn:	Finance
Address:	PO BOX 1088
City, State Zip Code:	Austin, Texas 78767
Email (preferred method):	WPDInvoices@austintexas.gov

For questions regarding your invoice/payment please contact the City Contract Manager.

- 4.1 Invoices shall reflect shipments in units identified on bid, namely "TONS". Invoices specifying units of measure other than TONS are subject to rejection by the City. When the City elects to pick up the materials, the same format of ticket will be provided for each load.

5. 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(s) having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor shall promptly notify the City and obtain written approval for the replacement. Such approval shall not be unreasonably withheld.

The City's key personnel are identified as follows:

	Name	Phone Number	Email Address
Contract Manager	Andres Ramirez	(512) 972-0310	Andres.Ramirez@austintexas.gov
Contract Manager WPD	Miriam Alanis	(512) 974-1774	Miriam.Alanis@austintexas.gov
Contractual Monitor AW	Kim Thoene	(512) 972-0360	Kim.Thoene@austintexas.gov
Operational Monitor	Scott Morrow	(512) 972-1208	Scott.Morrow@austintexas.gov
Procurement Specialist	Billy Toler	(512) 974-2054	William.toler@austintexas.gov

6. SINGLE POINT OF CONTACT:

The Contractor shall:

- 6.1 Designate a Single Point of Contact (SPOC) who shall be available for requests, that shall be available during business hours as specified in Section 3.0 and afterhours
- 6.1.1 The SPOC shall not be removed from the project without prior written consent by the Contract Manager or designee.

**CITY OF AUSTIN
SPECIFICATION FOR
SANDY AND CHOCOLATE LOAM SCREENED
SOLICITATION NO.: 2200 WJT1000**

- 6.1.2 If the SPOC is unavailable (due to vacation, travel, etc., for example), the Contractor shall provide a designee for the SPOC. The designee shall meet the same requirements as specified for the SPOC within this Scope of Work and shall have the same authority as the SPOC.

7. APPLICABLE SPECIFICATIONS:

- 7.1 The Contractor shall ensure the goods and/or services complies with Federal, State and Local Laws, regulations, policies, ordinances, and AW guidelines.
- 7.2 The Contractor shall comply with:
- 7.2.1 Environmental Protection Agency (EPA). <https://www.epa.gov/>
- 7.2.2 Texas Commission on Environmental Quality (TCEQ): <https://www.tceq.texas.gov/>
- 7.2.3 Occupational Safety and Health Administration (OSHA) safety requirements: <https://www.osha.gov/>
- 7.2.4 Texas Department of Transportation, Test Procedure for Determining Soil pH, Tex-128-E https://ftp.txdot.gov/pub/txdot-info/cst/TMS/100-E_series/pdfs/soi128.pdf

8. CONTRACTOR REQUIREMENTS:

- 8.1 The Contractor shall provide **with bid submittal** soil analysis of material. The City reserves the right to conduct sampling analysis during the bid process and throughout the contract. The sampling will be tested for compliance with the City specifications.

9. MATERIAL SPECIFICATIONS:

9.1 Sandy Loam

Sandy Loam is defined as material suitable for general non-structural fill, minor grading, and low constructed embankments. This material shall be a friable soil, without clods of clay, and that meets the following specifications:

- 9.1.1 Shall be a locally sourced native soil.
- 9.1.2 Shall not be taken from the upper two (2) feet of surface soil
- 9.1.3 Shall be free of debris, trash, roots, weeds, or other objectionable materials.
- 9.1.4 Shall have a pH between 5.5 and 8.5
- 9.1.5 Organic content shall not exceed 10% by mass.
- 9.1.6 Any Deleterious Material shall not exceed 5% Material shall not exceed a maximum Liquid Limit (LL) of 45, and a maximum Plasticity Index (PI) of 25.

9.2 Chocolate Loam Screened

Chocolate Loam is defined as material suitable for use as landscape fill materials for construction jobs. Chocolate Loam Screened shall be a fertile, friable, loamy surface soil that meet the following specifications:

**CITY OF AUSTIN
SPECIFICATION FOR
SANDY AND CHOCOLATE LOAM SCREENED
SOLICITATION NO.: 2200 WJT1000**

- 9.2.1 Shall be a locally sourced native soil.
- 9.2.2 Shall be free of debris, trash, roots, weeds, stumps, stones or other objectionable materials.
- 9.2.3 pH shall be between 5.5 and 8.5.
- 9.2.4 Organic content shall be between 2% and 15% by mass.
- 9.2.5 Sand Content shall be between 20% and 60% by mass.
- 9.2.6 Silt and Clay content shall be between 35% and 70% by mass.
- 9.2.7 Soluble Salt shall not exceed a maximum of 1,000 ppm.
- 9.2.8 Deleterious Material shall not exceed 5% by mass.
- 9.2.9 Material shall not exceed a maximum Liquid Limit (LL) of 45, and a maximum Plasticity Index (PI) of 25

10. **CITY REQUIREMENTS:**

The City will:

- 10.1 Provide a Contract Manager or designee who will schedule the service.
- 10.2 Schedule a contract kick-off meeting within five (5) business days of contract award to discuss the project.

**CITY OF AUSTIN
PRICE SHEET
SANDY LOAM & CHOCOLATE LOAM SCREENED**

Solicitation: 2200 WJT1000

Printed Company Name:

Special Instructions: Offerors must use this Bid Sheet to submit pricing. The City intends to award to the lowest responsive bid. Prices being submitted shall include ALL discounts, handling and shipping charges, FOB Destination.

Be advised that exceptions taken or qualifying statements made to any portion of the solicitations may jeopardize acceptance of the bid and may result in disqualification of the bid.

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' will be interpreted by the City that the responder does not wish to bid on that item.

The quantities noted below are annual estimates and not a guarantee of actual volume. The City does not guarantee the purchase of the quantities listed. Quantities are provided as a guide based on historical usage. Actual purchases may be more or less.

Single Point of Contact (SPOC): Please provide your single point of contact as specified in Section 0500 Section 6

NAME: Schuler Contracting, LLC dba Heartland Hauling

Email Address: kpedersen@heartlandaggregates.com

Office office phone number: 512-637-9745

Cell phone number: 512-656-7123

ITEM NO.	ITEM DESCRIPTION	ESTIMATED ANNUAL QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
1	Sandy Loam, pick-up by <u>City</u>	5,600	TON	\$7.00	\$39,200.00
2	Sandy Loam, delivered by <u>Bidder</u>	25,000	TON	\$15.00	\$375,000.00
3	Chocolate Loam Screened, pick-up by <u>City</u>	15,100	TON	\$7.00	\$105,700.00
4	Chocolate Loam Screened, delivered by <u>Bidder</u>	13,250	TON	\$15.00	\$198,750.00
5	Top Soil Screened, pick-up by <u>City</u>	1,200	TON	\$16.00	\$19,200.00
TOTAL \$					632,255.70

Additional Products or Catalog Items (FOR INFORMATIONAL PURPOSE - PRICING FOR THIS SECTION WILL NOT BE USED TO DETERMINE AWARD).

Please provide any other products or catalog items you will provide the City and the prices you would charge. This information will not be used in the evaluation of the quote and is for informational purposes only. There is no guarantee of purchase.

ITEM NO.	DESCRIPTION OF OTHER SERVICES OR PRODUCTS	UNIT OF MEASURE	PRICE*
5	Flat Rate for Emergency Delivery - Shall be made within twenty-four (24) hours after receipt of order. The City may require partial deliveries from a single truckload to be made at more than one location (specified in Section 0500 section 3.10).	Per Truck	\$300.00
6	Percentage discount off catalogue/price list of other items: Indicate the discount from Manufacturer's Suggested Retail Price.	Discount from MSRP	0 % Discount

* Unless otherwise specified, Price may be quoted as a firm-fixed price or as a percentage discount from quoter's regular fees.

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

Delivery Method: Tractor trailers or large dump trucks

FOR INFORMATION PURPOSES ONLY, BIDDER PROVIDES THE CONVERSION FROM TON TO CUBIC YARD AND THE LOOSE WEIGHT OF ONE CUBIC YARD OF EACH MATERIAL:

1 ton of Sandy Loam = 2/3 Cubic Yard Loose Weight of 1 Cubic Yard of Sandy Loam = 1.5 tons

1 ton of Chocolate Loam = 2/3 Cubic Yard Loose Weight of 1 Cubic Yard of Chocolate Loam Screened = 1.5 tons

1 ton of Top Soil = 2/3 Cubic Yard Loose Weight of 1 Cubic Yard of Topsoil Screened = 1.5 tons



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

Solicitation: IFB 2200 WJT1000 Addendum No: 1 Date of Addendum: 04/29/2021

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

I. Extension:

The bid due date is hereby extended until 2:00 PM Thursday, May 6th, 2021.

II. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

APPROVED BY: Matthew Duree
Procurement Manager
Purchasing Office, 512-974-2939

Digitally signed by
Matthew Duree
Date: 2021.04.29
14:30:36 -05'00'

Date

ACKNOWLEDGED BY:

Michelle Schuler
Name

Michelle Schuler
Authorized Signature

5/3/21
Date

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



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

Solicitation: IFB 2200 WJT1000

Addendum No: 2

Date of Addendum: 05/04/2021

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

- I. **Additional Information:** The proposal is extended due to accommodate addition of commodity codes to ensure maximum quantity of bidders are reached.
- II. **Extension:** The proposal due date is hereby extended until 2:00 p.m. Thursday, May 13, 2021.
- III. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

APPROVED BY: William J. Toler
Buyer's Name, Buyers Title
Purchasing Office, Buyer's Phone Number

Digitally signed by William
J. Toler
Date: 2021.05.04
14:15:56 -05'00'

Date

ACKNOWLEDGED BY:

Michelle Schuler
Name

Michelle Schuler
Authorized Signature

5/10/21
Date

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



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

Solicitation: IFB 2200 WJT1000

Addendum No: 1

Date of Addendum: 05/13/2021

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

- I. **Additional Information:** The proposal is extended to allow additional time for bids to be submitted.
- II. **Extension:** The proposal due date is hereby extended until 2:00 p.m. Thursday, May 20, 2021.
- III. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

APPROVED BY: William J. Toler
Billy Toler, Procurement Specialist III
Purchasing Office, Buyer's Phone Number

Digitally signed by William
J. Toler
Date: 2021.05.13
13:26:34 -05'00'

Date

ACKNOWLEDGED BY:

Michelle Schuber
Name

Michelle Schuber
Authorized Signature

5/13/21
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.



Offer and Certifications

Solicitation No.

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: **Schuler Contracting, LLC dba Heartland Hauling**

Company Address: **1405 E Riverside Dr**

City, State, Zip: **Austin, Texas 78741**

Company's Austin Finance Online Vendor Registration No. Registration No.

Company's Officer or Authorized Representative: **Michelle Schuler**

Title of Officer or Authorized Representative: **Manager**

Email: **Michelle@schulercontracting.com**

Offeror's Phone: **512-637-9722**

Offeror's Signature: Michelle Schuler

Date: **April 26, 2021**

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: _____

Printed Name of City's Authorized Procurement Staff: _____

Title of City's Authorized Procurement Staff: _____

Signature: _____

Date: _____

Email: _____

Phone: _____

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

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.

☐
(Check)

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

Rules. 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.

Click or tap here to enter text.

(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

Click or tap here to enter text.

(State)

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**

1405 E Riverside Dr., Austin, TX 78741

☐ **BRANCH OFFICE**

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

(Check One)

Do you employ anyone at the location checked above who is a resident of the City of Austin?

☒ **Yes**

☐ **No**

(Check One)

Benefit to the City. In accordance with Resolution, 20140807-113, Council has determined that contracts awarded to local companies that provide employment to Austin residents is an economic benefit.

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 Offeror'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. A company office other than the Offeror's headquarters, that has been in place for at least five (5) years.

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	Schuler Contracting, LLC dba Heartland Hauling		
City Vendor ID Code	V00000959318		
Physical Address	1405 E Riverside Dr		
City, State Zip	Austin, TX 78741		
Phone Number	512-637-9745	Email Address	kpedersen@heartlandaggregates.com
Is the Offeror City of Austin M/WBE certified?	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES Indicate one: <input type="checkbox"/> MBE <input checked="" 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.

____Michelle Schuler, Manager____

 4/26/2021____

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) to confirm if the Offeror's intended Subcontractor(s) are City of Austin certified M/WBE and if these firm(s) are certified to provide the goods and services the Offeror intends to subcontract. If the Offeror's Subcontractor(s) are current valid certified City of Austin M/WBE firms, the Offeror shall insert the name(s) of their Subcontractor(s) into the table below and must include the following documents in their sealed Offer:

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

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

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

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

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

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

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

GOOD FAITH EFFORTS CHECK LIST –

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



Contact SMBR. Offerors shall contact SMBR (512-974-7600 or SMBRComplianceDocuments@austintexas.gov) to obtain a list of City of Austin certified M/WBE firms that are certified to provide the goods and services the Offeror intends to subcontract out. (Availability List). Offerors shall document their contact(s) with SMBR in the "SMBR Contact Information" table on the following page.

- ☐ **Contact M/WBE firms.** Offerors shall contact all of the M/WBE firms on the Availability List with a Significant Local Business Presence which is the Austin Metropolitan Statistical Area, to provide information on the proposed goods and services proposed to be subcontracted and give the Subcontractor the opportunity to respond on their interest to bid on the proposed scope of work. When making the contacts, Offerors shall use at least two (2) of the following communication methods: email, fax, US mail or phone. Offerors shall give the contacted M/WBE firms at least seven days to respond with their interest. Offerors shall document all evidence of their contact(s) including: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.
- ☐ **Follow up with responding M/WBE firms.** Offeror shall follow up with all M/WBE firms that respond to the Offeror's request. Offerors shall provide written evidence of their contact(s): emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.
- ☐ **Advertise.** Offerors shall place an advertisement of the subcontracting opportunity in a local publication (i.e. newspaper, minority or women organizations, or electronic/social media). Offerors shall include a copy of their advertisement, including the name of the local publication and the date the advertisement was published.
- ☐ **Use a Community Organization.** Offerors shall solicit the services of a community organization(s); minority persons/women contractors'/trade group(s); local, state, and federal minority persons/women business assistance office(s); and other organizations to help solicit M/WBE firms. Offerors shall provide written evidence of their Proof of contact(s) include: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, organization contacted, phone number, email address and contact person.

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

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

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

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

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:	
Having reviewed this plan, I acknowledge that the Offeror <input type="checkbox"/> HAS or <input type="checkbox"/> 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 <input type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur with the Reviewing Counselor's recommendation.	
Director/Assistant Director or Designee	Date



Solicitation INSTRUCTIONS

Solicitation No.
IFB

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) 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.
- 4.6 Minority and Women Owned Business Enterprise (MBE/WBE) Procurement Program.** If the solicitation includes an MBE/WBE Program Compliance Plan or Offeror intends to subcontract, the Offeror 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 Utilization Plan as approved by the City (the "Plan").
- 4.6.1** The Payment Bond shall remain in effect throughout the term of the Contract, and shall be renewed for each respective extension.

5 Materials Specifications/Descriptive Literature.

- 5.1.1** 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 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.
- 5.1.2** Material 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.
- 5.1.3** 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.
- 5.1.4** Failure to submit the materials specifications/descriptive literature as part of the Offer may subject the Offer to disqualification from consideration for award.
- 5.2 Qualified products List: (AE Only)**
- 5.2.1** If a solicitation refers to a Qualified Products List (QPL) or a manufacturer's name and/or product number, only offers for those pre-qualified items and/or manufacturers will be considered for award.
- 5.3 Pricing Requirements – Non-Specified Items.**
- 5.3.1** The City may purchase additional related items that are available from the Contractor in various quantities. Pricing for these non-specified items will be calculated based on a percentage markup over Contractors cost as identified in the Price Sheet under the Non-Specified Parts Section.
- 5.3.2** Offeror shall bid a percentage markup to their cost.
- 5.3.2.1** The percentage markup shall be fixed throughout the term of the Contract and are not subject to increase. They shall also remain firm through subsequent renewal periods if the City and the Contractor choose to renew the Contract.
- 5.3.2.2** The Offeror may offer a different percentage discount or markup amount per manufacturer for any Non-Specified Part; however, parts within each manufacturer's product line shall be priced by taking the stated list price and applying that percentage discount or markup.
- 5.4 Hazardous Materials.**
- 5.4.1** If this Solicitation involves hazardous materials, the Offeror shall furnish with the Offer Safety Data Sheets (SDS), (OSHA Form 20), on all chemicals and hazardous materials specifying the generic and trade name of product, product specification, and full hazard information including receiving and storage hazards.

Instructions, special equipment needed for handling, information on approved containers, and instructions for the disposal of the material are also required.

5.4.2 Failure to submit the SDS as part of the Offer may subject the Offer to disqualification from consideration for award.

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

5.5 Recycled Products.

5.5.1 The City prefers that Offerors offer products that contain recycled materials. When a recycled product is offered by the Offeror, the Offeror must state in their Offer the percentage of the product that is recycled and must include a list of the recycled materials that are contained in the product.

5.5.2 The recycled content of paper products offered to the City shall be in accordance with the Federal Environmental Protection Agency's Recycled Product Procurement Guidelines. These guidelines are available at <http://www.epa.gov/cpg/>.

5.5.3 Contract award for paper products will be made for recycled products unless the cost is more than 10% above the lowest price for non-recycled paper products as required in the City's Comprehensive Recycling Resolution.

5.6 Published Price Lists.

5.6.1 Offerors may quote using published price lists in the following ways:

5.6.1.1 Offerors may quote one discount from a Published Price List for all offered items to be covered in the Contract. The discount must remain firm during the life of the Contract.

5.6.1.2 Offerors may quote their dealer cost, plus a percentage markup to be added to the cost. The percentage markup must remain firm during the life of the contract.

5.6.2 Two (2) copies of the list upon which the discounts or markups are based shall be submitted with the Offer. All price lists identified in the Offer shall clearly include the Offeror's name and address, the solicitation number, prices, title of the discount and number, and the latest effective date of the price list. If the Offer is based on a discount or markup on a manufacturer's price list, the price list must also include the manufacturer's name, the manufacturer's latest effective date, and the manufacturer's price schedule. All price lists submitted become part of the Offer.

5.6.3 The price list may be superseded or replaced during the Contract term only if price revisions are the result of the manufacturer's official price list revision. Written notification from the Contractor of price changes, along with two (2) copies of the revised list must be submitted to the Buyer in 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.

5.6.4 The discounts or markups on equipment rental, material, supplies, parts, and contract services shall be fixed throughout the term of the Contract and are not subject to increase.

5.6.5 Failure to submit written notification of price list revisions will result in the rejection of new prices being invoiced. The City will only pay invoices according to the last approved price list.

5.7 Buy America Act – Supplies.

5.7.1 In accordance with applicable Federal Regulations, the City is restricted from purchasing supplies that are not domestic end products, for use within the United States. Offerors shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the Buy American Act Certificate. (See Section 0300, paragraph 55 for additional guidelines).

5.7.2 Offerors shall sign and return with their Offer, the Buy American Act Certificate included in the Solicitation.

6 OFFER SUBMISSION

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

6.1 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 [Instructions, Submitting Offers in Austin Finance Online](#).

6.1.1 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.

6.1.2 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.

6.1.3 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.

6.1.4 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.

6.2 Hardcopy Offers. Hardcopy Offers (physical documents including paper and flash drives) must be returned in a sealed envelope and 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: [Insert Solicitation Number] P.O. Box 1088 Austin, Texas 78767-8845	City of Austin, Municipal Building Purchasing Office Response to Solicitation: [Insert Solicitation Number] 124 W 8 th Street, Rm 310 Austin, Texas 78701 Reception Phone: (512) 974-2500

6.2.1 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.

6.2.2 Withdrawing Hardcopy Offers. See below for changes due to the COVID-19 pandemic.

6.2.3 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.

- 6.2.4 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.

6.3 Special procedures due to 2020 COVID-19 Pandemic.

- 6.3.1 Confirmation of Submittals** – Due to the current Pandemic circumstances, the City is not able to provide written confirmation of Hardcopy Offers when they are received or able to verify receipt of Hardcopy Offers or provide signature confirmation of Offers delivered by common carriers.
- 6.3.2 Withdrawing Hardcopy Offers** – Hardcopy Offers may be withdrawn in writing or by email at any time prior to the Solicitations Due Date and Time. Offerors must send emails to withdraw Offers to the following email address: PurchasingAdmin@austintexas.gov
- 6.3.3 Solicitation Openings** - 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.

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.

7 OFFER EVALUATION

- 7.1 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.
- 7.2 Price Evaluation.** Once the City determines the basis of competition, the City will sort the bids from low to high price.
- 7.3 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.
- 7.4 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-responsible, the City will set their bid aside and proceed with evaluating the responsibility of the Offeror submitting the next low and responsive bid.
- 7.5 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.

8 CONTRACT AWARD AND EXECUTION

- 8.1 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 Presence 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. Local Business Presence is determined per the form in the Offer and Certifications Section of the Solicitation.

- 8.2 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.
- 8.3 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.

9 ADMINISTRATIVE MATTERS

- 9.1 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.
- 9.2 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.
- 9.3 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).
- 9.4 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.
- 9.4.1** 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.
- 9.4.2** 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.
- 9.4.3** 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.
- 9.4.4** 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.
- 9.4.5** Your protest shall be concise and presented logically and factually to help with the City's review.

- 9.4.6** 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.
- 9.4.7** 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.
- 9.4.8** A decision will usually be made within fifteen (15) calendar days after the hearing.
- 9.4.9** The City will send you a copy of the hearing decision after the appropriate City staff has reviewed the decision.
- 9.4.10** 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.
- 9.5 Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the successful Offeror. The Offeror is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

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

10 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
PRICE SHEET
SANDY LOAM & CHOCOLATE LOAM SCREENED**

Solicitation: 2200 WJT1000

Printed Company Name:

Special Instructions: Offerors must use this Bid Sheet to submit pricing. The City intends to award to the lowest responsive bid. Prices being submitted shall include ALL discounts, handling and shipping charges, FOB Destination.

Be advised that exceptions taken or qualifying statements made to any portion of the solicitations may jeopardize acceptance of the bid and may result in disqualification of the bid.

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' will be interpreted by the City that the responder does not wish to bid on that item.

The quantities noted below are annual estimates and not a guarantee of actual volume. The City does not guarantee the purchase of the quantities listed. Quantities are provided as a guide based on historical usage. Actual purchases may be more or less.

Single Point of Contact (SPOC) : Please provide your single point of contact as specified in Section 0500 Section 6

NAME: Schuler Contracting, LLC dba Heartland Hauling

Email Address: kpedersen@heartlandaggregates.com

Office office phone number: 512-637-9745

Cell phone number: 512-656-7123

ITEM NO.	ITEM DESCRIPTION	ESTIMATED ANNUAL QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
1	Sandy Loam, pick-up by <u>City</u>	5,600	TON	\$7.00	\$39,200.00
2	Sandy Loam, delivered by <u>Bidder</u>	25,000	TON	\$15.00	\$375,000.00
3	Chocolate Loam Screened, pick-up by <u>City</u>	15,100	TON	<u>\$7.00</u>	<u>\$105,700.00</u>
4	Chocolate Loam Screened, delivered by <u>Bidder</u>	13,250	TON	\$15.00	\$198,750.00
5	Top Soil Screened, pick-up by <u>City</u>	1,200	TON	\$16.00	\$19,200.00
TOTAL					<u>\$ 632,255.70</u>

Additional Products or Catalog Items (FOR INFORMATIONAL PURPOSE - PRICING FOR THIS SECTION WILL NOT BE USED TO DETERMINE AWARD).

Please provide any other products or catalog items you will provide the City and the prices you would charge. This information will not be used in the evaluation of the quote and is for informational purposes only. There is no guarantee of purchase.

ITEM NO.	DESCRIPTION OF OTHER SERVICES OR PRODUCTS	UNIT OF MEASURE	PRICE*
5	Flat Rate for Emergency Delivery - Shall be made within twenty-four (24) hours after receipt of order. The City may require partial deliveries from a single truckload to be made at more than one location (specified in Section 0500 section 3.10).	Per Truck	\$300.00
6	Percentage discount off catalogue/price list of other items: Indicate the discount from Manufacturer's Suggested Retail Price.	Discount from MSRP	0 % Discount

* Unless otherwise specified, Price may be quoted as a firm-fixed price or as a percentage discount from quoter's regular fees.

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

Delivery Method: Tractor trailers or large dump trucks

FOR INFORMATION PURPOSES ONLY, BIDDER PROVIDES THE CONVERSION FROM TON TO CUBIC YARD AND THE LOOSE WEIGHT OF ONE CUBIC YARD OF EACH MATERIAL:

1 ton of Sandy Loam = 2/3 Cubic Yard Loose Weight of 1 Cubic Yard of Sandy Loam = 1.5 tons

1 ton of Chocolate Loam = 2/3 Cubic Yard Loose Weight of 1 Cubic Yard of Chocolate Loam Screened = 1.5 tons

1 ton of Top Soil = 2/3 Cubic Yard Loose Weight of 1 Cubic Yard of Topsoil Screened = 1.5 tons

**CITY OF AUSTIN
PRICE SHEET
SANDY LOAM & CHOCOLATE LOAM SCREENED**

Solicitation: 2200 WJT1000

Printed Company Name: COMMUNITY TRUCKING, LLC

Special Instructions: Offerors must use this Bid Sheet to submit pricing. The City intends to award to the lowest responsive bid. Prices being submitted shall include ALL discounts, handling and shipping charges, FOB Destination.

Be advised that exceptions taken or qualifying statements made to any portion of the solicitations may jeopardize acceptance of the bid and may result in disqualification of the bid.

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' will be interpreted by the City that the responder does not wish to bid on that item.

The quantities noted below are annual estimates and not a guarantee of actual volume. The City does not guarantee the purchase of the quantities listed. Quantities are provided as a guide based on historical usage. Actual purchases may be more or less.

Single Point of Contact (SPOC): Please provide your single point of contact as specified in Section 0500 Section 6

NAME: TOM STRAZZA

Email Address: COMMTRUCKING@AOL.COM

Office office phone number: 512-581-7748

Cell phone number: 512-796-7551

ITEM NO.	ITEM DESCRIPTION	ESTIMATED ANNUAL QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
1	Sandy Loam, pick-up by <u>City</u>	5,600	TON	3.75	21,000.00
2	Sandy Loam, delivered by <u>Bidder</u>	25,000	TON	11.43	285,750.00
3	Chocolate Loam Screened, pick-up by <u>City</u>	15,100	TON	11.00	166,100.00
4	Chocolate Loam Screened, delivered by <u>Bidder</u>	13,250	TON	18.68	247,510.00
5	Top Soil Screened, pick-up by <u>City</u>	1,200	TON	20.50	246,000.00
TOTAL					\$966,360.00

Additional Products or Catalog Items (FOR INFORMATIONAL PURPOSE - PRICING FOR THIS SECTION WILL NOT BE USED TO DETERMINE AWARD).

Please provide any other products or catalog items you will provide the City and the prices you would charge. This information will not be used in the evaluation of the quote and is for informational purposes only. There is no guarantee of purchase.

Please list any additional products or catalog items your Company offers and the associated discount off retail price or mark-up to cost for the listed products or catalog items. A quote of zero ('0') will be interpreted by the City that the additional products or catalog items will be sold at the Manufacturer's Suggested Retail Price. A 'no quote' or blank entry will be interpreted by the City that your Company does not wish to provide additional products or catalog items. This information is for informational purposes only and will not be evaluated. The City does not guarantee the purchase of any additional products or catalog items.

ITEM NO.	DESCRIPTION OF OTHER SERVICES OR PRODUCTS	UNIT OF MEASURE	PRICE*
5	Flat Rate for Emergency Delivery - Shall be made within twenty-four (24) hours after receipt of order. The City may require partial deliveries from a single truckload to be made at more than one location (specified in Section 0500 section 3.10).	Per Truck	451. ⁰⁰
6	Percentage discount off catalogue/price list of other items: Indicate the discount from Manufacturer's Suggested Retail Price.	Discount from MSR	% Discount
* Unless otherwise specified, Price may be quoted as a firm-fixed price or as a percentage discount from quoter's regular fees.			
DELIVERY TERMS: DELIVERY IS TO BE FOB DESTINATION, PREPAID AND ALLOWED			
Delivery Method: 18 wheel 2nd Dump's			

FOR INFORMATION PURPOSES ONLY, BIDDER PROVIDES THE CONVERSION FROM TON TO CUBIC YARD AND THE LOOSE WEIGHT OF ONE CUBIC YARD OF EACH MATERIAL:

1 ton of Sandy Loam = <u>1.5</u> Cubic Yard	Loose Weight of 1 Cubic Yard of Sandy Loam = <u>1.5</u>
1 ton of Chocolate Loam = <u>1.5</u> Cubic Yard	Loose Weight of 1 Cubic Yard of Chocolate Loam Screened = <u>1.5</u>
1 ton of Top Soil = <u>1.5</u> Cubic Yard	Loose Weight of 1 Cubic Yard of Topsoil Screened = <u>1.5</u>

GOAL DETERMINATION REQUEST FORM

Buyer Name/Phone	Billy Toler 512-974-2054	PM Name/Phone	Kim Thoene 512-972-0360
Sponsor/User Dept.	2200 Austin Water	Sponsor Name/Phone	
Solicitation No	MA 2200 WJT1000	Project Name	Sandy and Chocolate Loam
Contract Amount	438,548.00	Ad Date (if applicable)	3/29/2021
Procurement Type			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input checked="" 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 type="checkbox"/> Commodities/Goods <input type="checkbox"/> Interlocal Agreement <input type="checkbox"/> AD – Design Build <input type="checkbox"/> IFB – Construction <input type="checkbox"/> PS – Rotation List <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Ratification			
Provide Project Description**			
The Contractor will provide and deliver Sandy Loam and Chocolate Loam Screened to be used for drainage, backfill and other various projects throughout the City. The contract will be used by Austin Water and various other departments.			
Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.			
Previous contract, GA15*83			
List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)			
7505665 - River Rock			
Billy Toler		3/18/2021	
Buyer Confirmation		Date	

* Sole Source must include Certificate of Exemption

**Project Description not required for Sole Source

FOR SMBR USE ONLY			
Date Received	3/22/2021	Date Assigned to BDC	3/22/2021
In accordance with Chapter2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:			
<input type="checkbox"/> Goals	% MBE	% WBE	
<input type="checkbox"/> Subgoals	% African American	% Hispanic	
	% Asian/Native American	% WBE	
<input type="checkbox"/> Exempt from MBE/WBE Procurement Program		<input checked="" type="checkbox"/> No Goals	

GOAL DETERMINATION REQUEST FORM

This determination is based upon the following:

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

If Other was selected, provide reasoning:

MBE/WBE/DBE Availability

Commodity Code has 2 available MBE firms. These firms may bid as prime vendors

Subcontracting Opportunities Identified

No subcontracting opportunities identified.

Kenneth Kalu

kennethkalu 3/23/2021

SMBR Staff

Signature/ Date

Jessica Oberembt

Jessica Oberembt 03.23.2021

SMBR Director or Designee

Date

Returned to/ Date: