

**Bidding Requirements, Contract Forms and Conditions of the Contract**  
**INSTRUCTIONS TO BIDDERS**  
Section 00100

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**1. Preparation of Bid**

- a. **Bid Documents.** Each Bidder must prepare its Bid in ink on forms furnished by OWNER or as otherwise specified or permitted. Blank spaces for each item in Bid form must be filled. Bidder must submit a price for each item in Bid. In case of conflict between unit prices and extensions, unit prices shall govern. The Bid must be executed in the complete and correct legal name of individual, partnership, firm, corporation or other legal entity constituting the Bidder.
- b. **Vendor Registration.** All CONTRACTORS must be registered to do business with OWNER prior to Contract Award. All Subcontractors must be registered with the OWNER prior to execution of a contract. Prime Contractors are responsible for ensuring that their Subcontractors are registered as vendors with the City of Austin. Registration can be done through the OWNER's on- line Vendor Registration system. Log onto <https://www.ci.austin.tx.us/vss/Advantage> and follow the directions.
- c. **Pre-Bid Conference.** Unless otherwise notified, Bidders must attend the Pre-Bid Conference to ensure their understanding of OWNER's bidding and contracting requirements, particularly MBE/WBE Procurement Program requirements.
- d. **Sales Tax Exemption.** The Owner is a tax-exempt organization as defined by Chapter 11 of the Property Tax Code of Texas. Bid prices shall not include sales tax on materials, supplies, or equipment that are incorporated into the real property interest of the OWNER or are otherwise completely used and consumed in the performance of the Contract. OWNER will furnish CONTRACTOR with a Sales Tax Exemption Certificate to be issued to Suppliers in lieu of the tax.
- e. **Addenda.** Bidder shall be knowledgeable of all Addenda issued and shall acknowledge all Addenda in spaces provided on Bid form. Further information regarding the Bid documents and the Project may be obtained from the Project Manager listed at the end of Section 00020, Invitation for Bids.
- f. **Required Items.** Bids must include all specified items in this section and be submitted in accordance with paragraph No. 7 below. Any additional requirement to the bid submittal is specified in Section 00820. Any corrections to a Bid shall be initialed by the person signing the Bid.
- g. **Professional Services.** Bidders must secure any required professional services that are defined as professional services under the Professional Services Procurement Act, Chapter 2254 of the Texas Government Code (for example: registered professional land surveyors and professional engineers) using the qualifications based selection process prescribed by that chapter. (Note: It is a violation of State Law to solicit Bids for professional services.)
- h. **Further Information.** Prospective Bidders desiring further information or interpretation of Project Manual or Drawings must make a written request for such information to OWNER addressed to the Authorized Contact Person listed in Section 00020 no later than seven (7) Working Days before Bid opening. Interpretation of Project Manual or Drawings will be made by Addendum only and a copy of each Addendum will be provided to each person to whom a set of Bid Documents has been furnished. Any verbal communications will not be binding on the OWNER.

- i. **Anti-Lobbying and Procurement.** Article 6, Chapter 2-7, Austin City Code, prohibits lobbying activities or representations by the Bidder between the date that the Invitation for Bid (IFB) is issued and the date of contract execution. The text of the pertinent City Ordinance may be viewed at <http://www.cityofaustin.org/edims/document.cfm?id=161145>.

**(1) Definitions**

- (A) "Agent" means a person authorized by a bidder to act for or in place of bidder, including a person acting at the request of bidder, a person acting with the knowledge and consent of a bidder, or a person acting with any arrangement, coordination, or direction between the person and the bidder.
- (B) "Authorized Contact Person" means the Project Manager listed in Section 00020, IFB, or other persons specifically identified in the IFB as the contact regarding the solicitation, or the authorized contact person's designee during the course of the no-contact period.
- (C) "City Employee" means a person employed by the City.
- (D) "City Official" is defined in Section 2-7-2 of the City Code.
- (E) "No-Contact Period" means the period of time from the date the IFB is issued until a contract is executed. If the City withdraws the IFB or rejects all bids with the stated intention to reissue the same or a similar IFB for the same or similar project, the no-contact period continues during the time period between the withdrawal and reissue.
- (F) "Response" means a bid.
- (G) "Respondent" means a bidder. The term "respondent" also includes:
  - (i) an owner, board member, officer, employee, contractor, subsidiary, joint enterprise, partnership, agent, lobbyist, or other representative of a bidder;
  - (ii) a person or representative of a person that is involved in a joint venture with the bidder, or a subcontractor in connection with the bidder's bid; and
  - (iii) a bidder who has withdrawn a bid or who has had a bid rejected or disqualified by the City.
- (H) "Representation" means a communication related to a bid to a council member, official, employee, or City representative that is intended to or that is reasonably likely to:
  - (i) provide information about the bid;
  - (ii) advance the interests of the bidder;
  - (iii) discredit the bid of another bidder;
  - (iv) encourage the City to withdraw the IFB;
  - (v) encourage the City to reject all of the bids;
  - (vi) convey a complaint about a particular bid; or
  - (vii) directly or indirectly ask, influence, or persuade any City official, City employee, or body to favor or oppose, recommend or not recommend, vote for or against, consider or not consider, or take action or refrain from taking action on any vote, decision, or agenda item regarding the solicitation.
- (I) "Solicitation" means an opportunity to compete to conduct business with the City that requires City Council approval under City Charter Article VII Section 15 (Purchase Procedure).
- (J) "City" means Owner.

**(2) Restriction on Contacts.**

- (A) During a no-contact period, a bidder shall make a representation only through the authorized contact person.
- (B) During the no-contact period, a bidder may not make a representation to a City official or to a City employee other than to the authorized contact person. This prohibition also applies to a vendor that makes a representation and then becomes a bidder.
- (C) The prohibition of a representation during the no-contact period applies to a representation initiated by a bidder, and to a representation made in response to a communication initiated by a City official or a City employee other than the authorized contact person.
- (D) If the City withdraws an IFB or rejects all bids with a stated intention to reissue the same or similar IFB for the same or similar project, the no-contact period shall expire after the ninetieth day after the date the IFB is withdrawn or all bids are rejected if the IFB has not been reissued during the ninety day period.
- (E) The no-contact period shall expire when the first of the following occurs: contract is executed or solicitation is cancelled.
- (F) The purchasing officer or the Capital Contracting Office Director may allow bidders to make representations to city employees or city representatives in addition to the authorized contact person for a solicitation that the purchasing officer or the Capital Contracting Office Director finds must be conducted in an expedited manner; an expedited solicitation is one conducted for reasons of health or safety under the shortest schedule possible with no extensions. The purchasing officer's or Capital Contracting Office Director's finding and additional city employees or city representatives who may be contacted must be included in the solicitation documents.
- (G) Representations to an independent contractor hired by the City to conduct or assist with a solicitation will be treated as representations to a City employee.
- (H) A current employee, director, officer, or member of a bidder, or a person related within the first degree of consanguinity or affinity to a current employee, director, officer or member of a bidder, is presumed to be an agent of the bidder for purposes of making a representation. This presumption is rebuttable by a preponderance of the evidence as determined by the purchasing officer or Capital Contracting Office Director.
- (I) A bidder's representative is a person or entity acting on a bidder's behalf with the bidder's request and consent. For example, a bidder may email their membership list and ask members to contact council members on the bidder's behalf. The members are then acting per bidder's request and with their consent, and the members have become bidder representatives.

**(3) Permitted Representations**

- (A) If City seeks additional information from bidder, the bidder shall submit the representation in writing only to the authorized contact person. The authorized contact person will then distribute the written representation in accordance with the terms of the IFB. A bidder cannot amend or add information to a bid after the bid deadline.
- (B) If bidder wishes to send a complaint to the City, the bidder shall submit the complaint in writing only to the authorized contact person. The authorized contact person will then distribute a complaint regarding the process to members of the city council or members of the City board, to the Capital

Contracting Office Director, and to all bidders on the IFB. However, the Capital Contracting Office Director or purchasing officer shall not permit distribution of any complaint that promotes or disparages the qualifications of a bidder, or that amends or adds information to a bid. A determination of what constitutes promoting or disparaging the qualifications of a bidder or constitutes amending or adding information is at the Capital Contracting Office Director's or purchasing officer's sole discretion. Bid protests are not subject to this subsection. Documents related to a bid protest may not be forwarded to council under this subsection.

- (C) If a bidder submits a written inquiry regarding an IFB, the authorized contact person will provide a written answer and distribute both the inquiry and answer to all bidders on the IFB.
- (D) If a bidder does not receive a response from the authorized contact person, the bidder may contact the Capital Contracting Office Director or purchasing officer as appropriate.
- (E) A bidder may ask a purely procedural question, for example a question regarding the time or location of an event, or where information may be obtained, of a City employee other than the authorized contact person. This provision does not permit a bidder to make suggestions or complaints about the contract process that constitute a representation to a City employee other than the authorized contact person. Notwithstanding this provision, a bidder may not ask a procedural question of a councilmember, a councilmember's aide, or of a City board member except in a meeting held under the Texas Government Code, Chapter 551 (Open Meetings Act).
- (F) Article 6 of the City Code allows representations:
  - (i) made at a meeting convened by the authorized contact person, including meetings to evaluate bids or negotiate a contract;
  - (ii) required by Financial Services Department protest procedures for vendors;
  - (iii) made at a Financial Services Department protest hearing;
  - (iv) provided to the Small & Minority Business Resources Department in order to obtain compliance with Chapter 2-9A-D (the Minority-Owned and Women-Owned Business Enterprise Procurement Program);
  - (v) made to the City Risk Management coordinator about insurance requirements for a bid;
  - (vi) made in public at a meeting held under the Texas Open Meetings Act; or
  - (vii) made from a bidder's attorney to an attorney in the Law Department in compliance with Texas Disciplinary Rules of Professional Conduct.
- (G) Communication regarding the solicitation is permitted between or among City officials or City employees acting in their official capacity.
- (H) A contribution or expenditure as defined in Chapter 2-2 (Campaign Finance) is not a representation.

#### **(4) Contract Voidable.**

If a contract is awarded to a bidder who has violated these Anti- Lobbying & Procurement provisions, the contract is voidable by the Owner.

#### **(5) Debarment.**

If a bidder has been disqualified under these provisions more than two times

in a sixty month period, the purchasing officer shall debar the bidder from bidding for a period not to exceed three years, provided the bidder is given written notice and a hearing in advance of the debarment.

**j. City's Minority-Owned and Women-Owned Business Enterprise / Disadvantaged Business Enterprise (MBE/WBE or DBE) Program Requirements. Good Faith Efforts.**

When a bidder cannot achieve the MBE/WBE or DBE goals or subgoals established for the project, the bidder must document its Good Faith Efforts to meet the goals or subgoals. Good Faith Effort evaluations will consider, at a minimum, the bidder's efforts to do the following:

- (1) Soliciting through at least two reasonable, available and verifiable means MBEs/WBEs within the Significant Local Business Presence boundaries at least seven (7) business days prior to the bid opening date to allow the MBEs/WBEs or DBEs to respond to the bid.
- (2) Providing interested MBEs/WBEs or DBEs adequate information about the bid documents and requirements, including addenda, in a timely manner to assist them in responding to the bid.
- (3) Negotiating in good faith with interested MBEs/WBEs DBEs that have submitted bids to the bidder.
- (4) Publishing notice in a local publication such as a newspaper, trade association publication or via electronic/social media.
- (5) Not rejecting MBEs/WBEs or DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- (6) Making economically feasible portions of the work available to MBE/WBE or DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE/WBE or DBE subcontractors and suppliers, so as to facilitate meeting the goals or subgoals.
- (7) The ability or desire of the bidder to perform the project work with its own organization does not relieve the bidder of the responsibility to make Good Faith Efforts.
- (8) Bidders are not required to accept higher quotes in order to meet the goals or subgoals.
- (9) Effectively using the services of Minority Person/Women community organizations; Minority Person/Women Contractors groups; local, state and federal Minority Person/Women business assistance offices; and other organizations to provide assistance in solicitation and utilization of MBEs, WBEs and/or DBEs.
- (10) In assessing minimum Good Faith Efforts, the OWNER may consider (1) whether the bidder sought guidance from the City of Austin Small and Minority Business Resources Department (SMBR) on any question regarding compliance with these requirements; and (2) the performance of other bidders in meeting the goals.

For additional information, refer to the MBE/WBE or DBE Compliance Program Requirements Volume of the Project Manual.

Bid shopping is not allowed in conjunction with this solicitation and may result in the disqualification of prospective bidders and subcontractors.

**2. Estimates of Quantities (Unit Price Contracts Only)**

Quantities listed in unit price Bid form are to be considered approximate quantities and will be used only for comparison of Bids. Payment to CONTRACTOR will be made only for actual quantities of Work performed or materials furnished in accordance with Contract and it is understood that quantities may be increased or decreased as provided

in Section 00700, General Conditions, and as may be modified by Section 00810, Supplemental General Conditions.

### **3. Drawings, Project Manual and Site (s) of Work**

Before submitting a Bid, the Bidder shall carefully examine the Bid Documents, site(s) of the proposed Work, soils, and other conditions that may affect the performance of the Work to satisfy the Bidder as to character, quality and quantities of Work to be performed and materials to be furnished. By submitting a Bid, the Bidder will be deemed to have certified that the Bidder has complied with these requirements. If, during preparation of the Bid, the Bidder discovers any suspected discrepancies or errors, the Bidder must immediately notify the Authorized Contact Person in writing of the suspected discrepancy or error. Failure to provide written notice of any suspected discrepancies or errors may be cause for rejection of the Bid.

### **4. Bid Guaranty**

All Bids shall be accompanied by a Bid guaranty in an amount of not less than five percent (5%) of the total Bid. If the total Bid amount is \$100,000 or less, Bidder has the option of providing a cashier's or certified check, made payable to City of Austin accompanied by a letter from a surety company indicating that Bidder can be bonded for the amount of the Project, or a Bid bond with Power of Attorney attached, issued by a solvent surety authorized under laws of the State of Texas and acceptable to OWNER. If the total Bid amount exceeds \$100,000, the only acceptable Bid guaranty will be a Bid bond with Power of Attorney attached, issued by a solvent surety authorized under laws of the State of Texas and acceptable to OWNER.

The Bid guaranty accompanying the Bid of the three (3) apparent low Bidders will be retained until Contract is awarded and successful Bidder executes Contract and furnishes required bonds and insurance, after which Bid guaranty will be returned to the Bidders. All other Bid guaranties will be returned after Bid certification. In the event that the Bidder to whom the Contract is awarded fails to timely execute the Contract, the Bidder agrees that the OWNER in its discretion may rescind the initial award and award the Contract to the next lowest responsible Bidder.

### **5. Performance and Payment Bonds**

When performance and/or payment bonds are required, each shall be issued in an amount equal to the Contract Amount as security for the faithful performance and/or payment of all Contractor's obligations under the Contract Documents. Performance and payment bonds shall be issued by a solvent corporate surety authorized to do business in the State of Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law.

### **6. Consideration of Bid Amount**

For purpose of award, after Bids are opened, read aloud, reviewed, and certified, the total amount of the Bid, including accepted Bid alternates, will be considered the amount of the Bid. Upon request, certified Bid tabulations will be made available to the public. OWNER reserves the right to reject any or all Bids and to waive any minor informality in any Bid or solicitation procedure (a minor informality is one that does not affect the competitiveness of the Bids).

### **7. Submission of Bid**

Each Bid must be completed and signed by person(s) authorized to bind individual, partnership, firm, corporation, or any other legal entity submitting the Bid, and, shall include the following in one envelope furnished by OWNER:

- (a) One copy of Bid form (Section 00300L or 00300U) completed and signed.
- (b) Acknowledgment of receipt of Addenda issued in spaces provided in Bid form.
- (c) Required Bid guaranty.
- (d) Copy of statement of legal entity status, as applicable, including but not limited to, as applicable, Statement of Sole Proprietorship, Articles of Partnership or Incorporation and resolution, or corporate board minutes, empowering signatory to bind Bidder, attested to by an officer of Bidder. The required information is set forth in Section 00100, Paragraph 15.
- (e) Unless provided to the contrary in Section 00820 (Modifications to Bidding Requirements and Contract Forms), one copy of Attachments A, B, C, and D and any other specifically designated Attachments if the Statement of Bidder's Experience (Section 00400) is required to be submitted as part of the Bid, completed and signed.
- (f) One Copy of the Certificate of Non-Suspension or Debarment (Section 00405), completed and signed. (Applicable for Bid amounts equal to or in excess of \$25,000.00.)
- (g) One copy of the Insurance Cost Form (Section 00425A), completed and signed (ROCIP projects only).
- (h) One copy of the Owner Controlled Insurance Program Information (Section 00425B, VI- Contractor Affidavit of Receipt and Provision of ROCIP Information), signed (ROCIP projects only).
- (i) One copy of the Affidavit - Prohibited Activities (Section 00440), completed and signed.
- (j) One copy of the Nonresident Bidder Provisions (Section 00475), completed and signed.
- (k) One copy of the Nondiscrimination Certificate (Section 00630), completed and signed.
- (l) One copy of the Title VI Assurances Appendix A (Section 00631), completed and signed.
- (m) One copy of Exhibit A Federal Provisions (Section 00810A, pages 1-9) completed and signed. (Federal projects only)
- (n) Required information indicated in Drawings or Project Manual.

Bid must be accompanied by a MBE/WBE or DBE Compliance Plan, signed by the authorized representative described above, that should be submitted separately in a second envelope furnished by OWNER, or other appropriate packaging accompanied by the furnished envelope, prior to the date and time set forth in Section 00020, Invitation for Bids. The Compliance Plan forms are included in the MBE/WBE Procurement Program Package or DBE Procurement Program Package (a separately bound volume).

Bid shall include all specified items in this section and be placed in envelopes furnished by OWNER, or other appropriate packaging, accompanied by and attached to the OWNER furnished envelopes, sealed and clearly identified on outside as a Bid to OWNER, with Bidder's name and address, and project name. Failure to submit Bid appropriately may subject Bidder to disqualification. Bid may be mailed or delivered (in person or by Federal Express, Express Mail or other delivery service) to:

City of Austin  
Capital Contracting Office  
One Texas Center  
505 Barton Springs Rd.  
Suite 1045-C  
Austin, Texas 78704

When sent by mail, Federal Express, Express Mail, or other delivery service, sealed Bid (marked as indicated above) shall be enclosed in an additional envelope, or other appropriate packaging, clearly identified on outside as a Bid to OWNER with Bidder's name and address, Project name, and Bid date and time. It is the sole responsibility of the Bidder to ensure timely delivery of Bid. OWNER will not be responsible for failure of service on the part of the U.S. Post Office, courier services, or any other form of delivery service chosen by the Bidder. (See Section 00820, Modifications to Bidding Requirements and Contract Forms, for modifications to solicitations without MBE/WBE or DBE goals.)

In submitting its Bid, Bidder certifies that it has not lobbied the City or its officials, managers, employees, consultants, or contractors in such a manner as to influence or to attempt to influence the bidding process. In the event it reasonably appears that the Bidder influenced or attempted to influence the bidding process, the City may, in its discretion, reject the Bid.

### **8. Withdrawal of Bid**

A Bid may be withdrawn by a Bidder, provided an authorized individual of the Bidder submits a written request to withdraw the Bid prior to the time set for opening the Bids.

### **9. Rejection of Bids**

A. The following **will** be cause to reject a Bid:

- (1) Bids which are not signed by an individual empowered to bind the Bidder.
- (2) Bids which are not accompanied by acceptable Bid guaranty, with Power of Attorney attached, or a letter certifying the Bidder's ability to be bonded, from a surety company, in accordance with Paragraph 4 above.
- (3) More than one Bid for same Work from an individual, firm, partnership or corporation.
- (4) Evidence of collusion among Bidders.
- (5) Sworn testimony or discovery in pending litigation with OWNER which discloses misconduct or willful refusal by contractor to comply with subject contract or instructions of OWNER.
- (6) Failure to submit MBE/WBE or DBE Compliance Plan in accordance with the separately bound volume titled MBE/WBE Procurement Program Package or DBE Procurement Program Package.
- (7) Failure to have an authorized agent of the Bidder attend the mandatory Pre- Bid Conference, if applicable.
- (8) Bids received from a Bidder who has been debarred or suspended by OWNER's Purchasing Officer.
- (9) Bids received from a Bidder when Bidder or principals are currently debarred or suspended by Federal, State or City governmental agencies. (Applicable for Bid amounts equal to or in excess of \$25,000.00).
- (10) Failure to submit a signed copy of the Title VI Assurances Appendix A (Section 00631)

- (11) Failure to submit Section 00810A Exhibit A Federal Provisions pages 1-9 with Bidder's Bid, if applicable.

B. The following **may** be cause to reject a Bid:

- (1) Poor performance in execution of work under a previous City of Austin contract.
- (2) Failure to achieve reasonable progress on an existing City of Austin contract.
- (3) Default on previous contracts or failure to execute Contract after award.
- (4) Evidence of failure to pay Subcontractors, Suppliers or employees in accordance with Contract requirements.
- (5) Bids containing omissions, alterations of form, additions, qualifications or conditions not called for by OWNER, or incomplete Bids may be rejected. In any case of ambiguity or lack of clarity in the Bid, OWNER reserves right to determine most advantageous Bid or to reject the Bid.
- (6) Failure to acknowledge receipt of Addenda.
- (7) Failure to submit any of the items specified above in paragraph 7, "Submission of Bid", which are not cause for mandatory rejection in paragraph 9, "Rejection of Bids," section A.
- (8) Failure to identify a dollar amount (price) of a unit price(s) in the 00300U
- (9) Failure to submit post-Bid information within the allotted time(s) (see paragraph 11 for post-Bid requirements)
- (10) Failure to timely execute Contract after award.
- (11) Previous environmental violations resulting in fines or citations by a governmental entity (i.e. U.S. Environmental Protection Agency, Texas Commission on Environmental Quality, etc.).
- (12) Safety record as set forth in Section 00410, Statement of Bidder's Safety Experience.
- (13) Failure of Bidder to demonstrate, through submission of Attachments A, B, C, and D, the minimum experience required as specified in Section 00400 if that Section is included in the bidding documents.
- (14) Evidence of Bidder's lack of sufficient resources, workforce, equipment or supervision, if required by inclusion of appropriate attachments in Section 00400.
- (15) Evidence of poor performance on previous Projects as documented in Owner's project performance evaluations.
- (16) Unbalanced Unit Price Bid: "Unbalanced Bid" means a Bid, which includes a Bid that is based on unit prices which are significantly less than cost for some Bid items and significantly more than cost for others. This may be evidenced by submission of unit price Bid items where the cost are significantly higher/lower than the cost of the same Bid items submitted by other Bidders on the project.

- (17) Failure of Bidder to complete, sign and submit Section 00440, Affidavit - Prohibited Activities.
- (18) Failure to complete and sign Section 00425-B, VI- Contractor Affidavit of Receipt and Provision of ROCIP Information.

#### **10. Protest Procedures:**

The OWNER's Capital Contracting Office Director has the authority to settle or resolve any claim of an alleged deficiency or protest. The procedures for notifying OWNER of an alleged deficiency or filing a protest are listed below. If you fail to comply with any of these requirements, the Capital Contracting Office Director may dismiss your complaint or protest.

Prior to Bid opening: If you are a prospective Bidder and you become aware of the facts regarding what you believe is a deficiency in the solicitation process before the Bid is opened, you must notify OWNER in writing of the alleged deficiency before that date, giving OWNER an opportunity to resolve the situation prior to the Bid opening.

After Bid opening: If you submit a Bid to OWNER and (1) you have been found non-responsive, or

(2) you believe that there has been a deficiency in the solicitation process or the award, you have the opportunity to protest the solicitation process or the recommended award as follows:

1. You must file written notice of your intent to protest within four (4) calendar days of the date that you know or should have known of the facts relating to the protest. If you do not file a written notice of intent within this time, you have waived all rights to protest the solicitation process or the award.
2. You must file your written protest within fourteen (14) calendar days of the date that you know or should have known of the facts relating to the protest unless you know of the facts before the Bid has been opened. If you know of the facts before that date, you must notify OWNER as stated above.
3. You must submit your protest in writing and must include the following information:
  - a. your name, address, telephone, and email address;
  - b. the solicitation number and the CIP number, if applicable;
  - c. a detailed statement of the factual grounds for the protest, including copies of any relevant documents.
4. Your protest must be concise and presented logically and factually to help with OWNER's review.
5. When OWNER receives a timely written protest, the Capital Contracting Office Director will determine whether the grounds for your protest are sufficient. If the Capital Contracting Office Director decides that the grounds are sufficient, the Capital Contracting Office will schedule a protest hearing, usually within five (5) working days. If the Capital Contracting Office Director determines that your grounds are insufficient, you will be notified of that decision in writing.
6. 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 OWNER are: representatives from the department that requested the purchase, the Law Department, the Capital Contracting 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.

7. A decision will usually be made within fifteen (15) calendar days after the hearing.
8. The Capital Contracting Office Director will send you a copy of the hearing decision after the appropriate City staff has reviewed the decision.
9. When a protest is filed, OWNER usually will not make an award until a decision on the protest is made. However, OWNER will not delay an award if the City Manager or the Capital Contracting Office Director determines that:
  - a. OWNER urgently requires the supplies or services to be purchased, or
  - b. Failure to make an award promptly will unduly delay delivery or performance.

In those instances, the Capital Contracting Office will notify you and make every effort to resolve your protest before the award.

The protest or notice of intent and the protest shall be submitted in writing to the following address:

City of Austin  
Capital Contracting Office  
ATTN: Capital Contracting  
Office Director  
One Texas Center  
505 Barton Springs Rd.  
Suite 1045-A  
Austin, Texas 78704  
PHONE: 512/974-7141  
FAX: 512/974-9427

## **11. Submission of Post Bid Information**

Prior to determination of the certified low Bidder, the three (3) apparent low Bidders must submit to OWNER the following information within three (3) business days of receipt of notice of apparent low Bidder status by the OWNER:

1. One copy of any additionally required attachments, if specified in the bidding documents, to the Bidder's Experience Record (Section 00400) completed in their entirety, including attachments, and signed.
2. Section 00410, Statement of Bidder's Safety Experience, including required attachments, completed and signed.
3. Such other information as is required to evaluate Bid or Bidder.

Upon notification of status as certified low Bidder, for ROCIP projects, Bidder shall submit the following information to OWNER within three (3) business days: 1. Letter(s) of intent between Bidder and all subcontractor(s) and all supplier(s) identified in the MBE/WBE Compliance Plan. 2. Section 00425B, VII Subcontractor Affidavit of Receipt and Provision of ROCIP Information ( for Subcontractor(s) of all tiers identified in the MBE/WBE Compliance Plan).

3. Such other information as required. (Note: OWNER reserves the right to solely determine whether the comparable experience documentation provided by the Bidder is sufficient and relevant to the Work described in the Contract Documents for the Bidder to be considered a responsible Bidder. In addition, the Bidder acknowledges and agrees that the failure to timely provide the additional information required by this section will result in a determination that, for the purposes of this solicitation, the

Bidder has not provided sufficient information for the OWNER to be able to determine that the Bidder is a responsible Bidder.)

## **12. Award and Execution of Contract**

OWNER will process Bids expeditiously. Award of Contract will be to the lowest, responsible Bidder meeting all requirements of the Bid Documents. OWNER may not award Contract to a nonresident Bidder unless the nonresident underbids the lowest Bid submitted by a responsible resident Bidder by an amount that is not less than the amount by which a resident Bidder would be required to underbid the nonresident Bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located.

Award of Contract will occur within the period identified on the Bid form, unless mutually agreed between the parties. Capital Contracting Office Director shall submit recommendation for award to the City Council for those project awards requiring City Council action. Contract will be signed by City Manager or his/her designee after award and submission of required documentation by Bidder. Contract will not be binding upon OWNER until it has been executed by both parties. OWNER will process the Contract expeditiously. However, OWNER will not be liable for any delays prior to the award or execution of Contract.

Upon contract award, the selected Bidder must submit either their existing or an updated personnel policy (on letterhead) documenting conformity with City Code, Chapter 5-4, § 5-4-2. If the company does not submit a copy of their personnel policy incorporating the non-discrimination policy, the City of Austin Nondiscrimination Policy (Section 00630) will be considered the Bidder's nondiscrimination policy.

In any case of ambiguity or lack of clarity in the Bid, OWNER reserves the right to determine the most advantageous Bid or to reject the Bid.

Notwithstanding anything in this Section 00100 to the contrary, the OWNER may award a contract for construction services in an amount of less than \$100,000 to a bidder whose principal place of business is in the City of Austin and whose bid is within 5% of the lowest bid price received from a bidder whose principal place of business is not within the City of Austin, if the City finds that the local bidder offers the City the best combination of contract price and additional economic development opportunities for the City created by the contract award including the employment of resident of the City and increased tax revenues to the City.

## **13. Partnering**

In order to complete the Work in a manner that is most beneficial to the OWNER and CONTRACTOR, OWNER and CONTRACTOR may form a "Partnering Team", which will include the E/A, and any major Subcontractors. This partnering relationship will draw on the strength of all parties to identify and achieve mutual goals. The objectives of this partnering relationship are effective and efficient communication and Contract performance, which is intended to ensure that the Project is completed within budget, on schedule, and in accordance with the Drawings and Specifications and other Contract requirements. While the partnering relationship will be multilateral in makeup and participation will be totally voluntary, the OWNER and CONTRACTOR agree to cooperate and use reasonable good faith efforts to discuss and resolve any and all Project issues and disputes. Section 01100, Special Project Procedures and/or Section 01200, Project Meetings contain additional information regarding the intent of the partnering relationship and responsibilities of the entities entering into the partnering charter.

## **14. ROCIP Requirements**

If the insurance on this Project will be under the Rolling Owner Controlled Insurance Program (ROCIP), the Bidder is directed to Section 00810, Supplemental General Conditions, Section 00820, Modifications to Bidding Requirements and Contract Forms, and the Project Safety Manual included with these contract documents for information and bidding requirements.

The Insurance Cost Form, Section 00425A, Rolling Owner Controlled Insurance Program Information Section 00425B, VI Contractor Affidavit of Receipt and Provision of ROCIP Information must be accurately completed and submitted with the Bid to indicate insurance removed from Base Bid and Alternates. CONTRACTOR shall remove from the Bid the cost of insurance for the CONTRACTOR and Subcontractors of all tiers working on site.

The Statement of Bidder's Safety Experience, Section 00410, must be accurately completed and submitted with the Bid.

The Rolling Owner Controlled Insurance Program Information, Section 00425 B, VII Subcontractor Affidavit of Receipt and Provision of ROCIP Information for subcontractor(s) of all tiers identified in the MBE/WBE Compliance Plan must be accurately completed and submitted as a post bid submittal and further Subcontractor Affidavits must be submitted throughout the duration of the Contract as Subcontractor(s) are added.

## 15. Signature Requirements

The Bid and any subsequent supporting Bid documents and Contract must be executed in the Bidder's full name and legal entity status by an authorized representative of the Bidder and accompanied by sufficient documentation, which clearly indicates not only the legal name and entity status of Bidder, but also the capacity and authority of the person signing on behalf of Bidder. Accordingly, a partnership/joint venture must file its partnership/joint venture agreement, a corporation must file its articles and bylaws, a limited liability company must file its certificate of organization and article of organization and regulations, and a limited partnership must file not only limited partnership agreement and the certificate of limited partnership, but also the documentation for its general partner, and any Bidder must file a copy of any assumed name certificate, or such limited portion of such documents reasonably establishing signature authority.

The following samples show the entity information and signature requirements that will apply to all Bid and contract execution documents for the type of entity indicated:

### 1. Individual/Sole Proprietor (sample)

The individual/sole proprietor must sign the document in his or her personal capacity or in any assumed name capacity accompanied by a copy of any assumed name certificate.

Name of Contractor (d/b/a, if appropriate), a sole proprietor By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

### 2. Partnership/Joint Venture (sample)

A partner/joint venturer must sign the document in his or her capacity as a partner/joint venturer and in any assumed name capacity accompanied by a copy of the assumed name certificate, if any, and a copy of the partnership or joint venture agreement, as applicable, with additional documentation, if

necessary, establishing the authority of the signatory individual.

Name of Partnership/Joint Venture, a Texas Partnership/JV, as appropriate By: \_\_\_\_\_

Printed or Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_ (Partner, managing partner, venturer, managing venturer, as approp.)

Authorized Representative

3. Corporation (sample)

An authorized officer or agent of the corporation must sign the documents on behalf of the corporation in his or her capacity as the authorized representative of the corporation accompanied by a copy of a corporate resolution and minutes granting such authority with a certificate of an officer of the corporation as to the authority of the signatory to bind the CONTRACTOR signed and dated no more than one week before the date of execution of the document.

Name of Contractor, Inc. or Co., a Texas corporation, as appropriate By: \_\_\_\_\_

Printed or Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_ (Officer or Agent (as appropriate)) Authorized Representative

4. Limited Liability Company (sample)

An authorized manager or member of the LLC must sign the document in his or her capacity as a manager or member accompanied by a copy of the LLC's certificate of organization and articles of organization and regulations evidencing such person's signatory authority.

Name of Contractor, L.L.C., a Texas limited liability company, as appropriate By: \_\_\_\_\_,

Printed or Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_, (Manager or Member (as appropriate)) Authorized Representative

5. Limited Partnership (sample)

The general partner of a limited partnership must execute the documents on behalf of the limited partnership, accompanied by copy of the limited partnership agreement and the certificate of limited partnership. In addition, the signatory must sign the documents in his or her capacity as an authorized officer or agent of the corporation or member or manager of the LLC, as appropriate, accompanied by a copy of the corporate or LLC documentation stipulated above.

Name of Contractor, Ltd., a Texas limited partnership, as appropriate By: Name of General Partner (usually a

Texas corporation or an L.L.C.) By: \_\_\_\_\_

Printed or Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_ Officer or Agent of  
Corporation or LLC Authorized Representative

## 16. Contractor Evaluation

The Owner will review and evaluate the Contractor's Work and performance on the Project and provide the Contractor with a written Contractor Evaluation Report in accordance with City of Austin Administrative Rule R161-13.37. Rule R161-13.37 provides an appeal process.

<http://www.austintexas.gov/department/contract-management>

## 17. Texas Ethics Commission Certificate of Interested Parties Disclosure Form

(1) Definitions:

(A) "Interested Party" – means a person who has a controlling interest in a Business Entity with whom the Owner contacts or who actively participates in facilitating the Contract or negotiating the terms of the Contract, including a broker, intermediary, adviser, or attorney for the Business Entity.

(B) "Business Entity" – means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation.

(2) As a condition to entering the Contract, the Business Entity constituting the successful Bidder must provide a Texas Ethics Commission Certificate of Interested Parties Form to the Owner at the time the Business Entity/Bidder submits the signed Contract to the Owner in full compliance with the following requirements under which the successful Bidder shall:

(i) go to the Ethics Commission's website ([www.ethics.state.tx.us](http://www.ethics.state.tx.us)),

(ii) complete the "Interested Parties" information, in accordance with the requirements of the Texas Ethics Commission Rules published at Title 1, Part 2, Chapter 46, of the Texas Administrative Code and available on the referenced website,

(iii) include the City's contract identification number,

(iv) include a short description of the goods or services to be used by the City, and

(v) indicate whether each interested party has a controlling interest in the business entity, is an intermediary in the contract for which the disclosure is being filed, or both.

(3) In accordance with the Commission Rules, the Certificate of Filing and completed Certificate of Interested Parties must be (i) printed, (ii) signed by an authorized agent of the business entity, and (iii) submitted to the City at the time of the submission of the signed contract to the City. The City then must notify the Ethics Commission in electronic format of receipt of the document within 30 days of contracting and the Commission will make the disclosure of interested parties available to the public on its website.

**End**