



CITY OF AUSTIN, TEXAS
Purchasing Office
REQUEST FOR PROPOSAL (RFP)
OFFER SHEET

SOLICITATION NO: RFP 1100
PAX3150REBID

COMMODITY/SERVICE DESCRIPTION: Cloud Hosted Energy
Trading & Risk Management (ETRM) Solution

DATE ISSUED: 10/07/2019

REQUISITION NO.: RQM 1100 19041100451

PRE-PROPOSAL CONFERENCE TIME AND DATE: 10/16/2019,
3:00 pm, local time.

COMMODITY CODE: 92003, 20811

LOCATION: 721 Barton Springs Road 78704, room 100
CONFERENCE CALL NO: 512-974-9300
CODE: 521387

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

PROPOSAL DUE PRIOR TO: 11/07/2019, 2:00 pm, local time

Sai Xoomsai Purcell
Procurement Supervisor

PROPOSAL OPENING TIME AND DATE: 11/07/2019, 3:00 pm, local
time

Phone: (512) 505-7601
E-Mail: Sai.Xoomsai@austintexas.gov

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

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

Paula Barriffe
Procurement Specialist III

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

Phone: (512) 322-6118
E-Mail: Paula.Barriffe@austinenergy.coM

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

When submitting a sealed Offer , use the proper address for the type of service desired, as shown below:

Address for US Mail (Only)	Address for FedEx, UPS, Hand Delivery or Courier
City of Austin	City of Austin, Municipal Building
Purchasing Office-Response Enclosed for Solicitation # RFP 1100 PAX3150REBID	Purchasing Office-Response Enclosed for Solicitation # RFP 1100 PAX3150REBID
P.O. Box 1088	124 W 8 th Street, Rm 308
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

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

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

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

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

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

SECTION NO.	TITLE	PAGES
0100	STANDARD PURCHASE DEFINITIONS	*
0200 V2	STANDARD SOLICITATION INSTRUCTIONS, UPDATED JUNE 26, 2018	*
0300IT	STANDARD PURCHASE TERMS AND CONDITIONS	18
0400	SUPPLEMENTAL PURCHASE PROVISIONS	7
0500	SCOPE OF WORK	14
0600	PROPOSAL PREPARATION INSTRUCTIONS & EVALUATION FACTORS	6
0601	PRICE PROPOSAL SHEET	3
0605	LOCAL BUSINESS PRESENCE IDENTIFICATION FORM – Complete and return	2
0630	PROPOSAL EXCEPTION FORM	1
0800	NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION–Complete and return	2
0801	NETWORK ACCESS	11
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	*
0810 V2	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION, UPDATED JUNE 26, 2018	*
0835	NONRESIDENT BIDDER PROVISIONS – Complete and return	1
0840	SERVICE-DISABLED VETERAN BUSINESS ENTERPRISE – Complete and return	1
0900	SUBCONTRACTING/SUB-CONSULTING UTILIZATION FORM – Complete & return	1
0905	SUBCONTRACTING/SUB-CONSULTING UTILIZATION PLAN – Complete and return if applicable	3
Appendix A	Functional Requirements Technical Requirements	3 Tabs
Exhibit A	Data Handling Controls	22

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

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

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

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

Company Name: _____

Company Address: _____

City, State, Zip: _____

Vendor Registration No. _____

Printed Name of Officer or Authorized
Representative: _____

Title: _____

Signature of Officer or Authorized
Representative: _____

Date: _____

Email Address: _____

Phone Number: _____

*** Proposal response must be submitted with this signed Offer sheet to be considered for award**

Section 0605: Local Business Presence Identification

A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years, currently employs residents of the City of Austin, Texas, and will use employees that reside in the City of Austin, Texas, to support this Contract. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

OFFEROR MUST SUBMIT THE FOLLOWING INFORMATION FOR EACH LOCAL BUSINESS (INCLUDING THE OFFEROR, IF APPLICABLE) TO BE CONSIDERED FOR LOCAL PRESENCE.

NOTE: ALL FIRMS MUST BE IDENTIFIED ON THE MBE/WBE COMPLIANCE PLAN OR NO GOALS UTILIZATION PLAN (REFERENCE SECTION 0900).

USE ADDITIONAL PAGES AS NECESSARY

OFFEROR:

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years?	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No

Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

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

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

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

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

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

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

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

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

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

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

not continue.

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

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

Sanctions:

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

Term:

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

Dated this _____ day of _____, _____

CONTRACTOR	_____
Authorized Signature	_____
Title	_____

Section 0835: Non-Resident Bidder Provisions

Company Name _____

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "non-resident Bidder"?

Answer: _____

- (1) Texas Resident Bidder- A Bidder whose principle place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.
(2) Nonresident Bidder- A Bidder who is not a Texas Resident Bidder.

- B. If the Bidder is a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state?

Answer: _____ Which State: _____

- C. If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a Contract on such bid in said state?

Answer: _____

Section 0840, Service-Disabled Veteran Business Enterprise Preference

Offeror Name
[OFFEROR NAME]

Additional Solicitation Instructions.

- ☐ By checking this box, Offeror states they are NOT a certified Service-Disabled Veteran Business Enterprise seeking to claim preference points under the City of Austin's SDVBE Program.
- Offerors seeking to claim the Service-Disabled Veteran Business Enterprise (SDVBE) preference shall be certified **under one of the two following scenarios**. Offerors shall check one of the following boxes, input the data in the applicable table below and include this completed form in their Proposal.
 - ☐ **HUB/SV**. Offeror is certified as a Service-Disabled Veteran (SV) Historically Underutilized Business (HUB) by the Texas State Comptroller of Public Accounts.

Texas State HUB/SV Certification	
13-Digit Vendor ID (VID)	
HUB/SV Issue Date	
HUB/SV Expiration Date	

- ☐ **HUB/OTHER + Federal SDVOSB**. Offeror is certified by the Texas State Comptroller of Public Accounts as a Historically Underutilized Business in a HUB Eligibility Category other than Service-Disabled Veteran (SV) AND is verified by the US Veterans Administration as a Service-Disabled Veteran-Owned Small Business (SDVOSB). **Texas HUB Eligibility Categories:** HUB/BL (Black), HUB/AS (Asian), HUB/HI (Hispanic), HUB/AI (Native American), or HUB/WO (Women Owned).

Texas State HUB/OTHER Certification	
13-Digit Vendor ID (VID)	
HUB Eligibility Category	
HUB Issue Date	
HUB Expiration Date	

Federal SDVOSB Verification	
9-Digit DUNS	
SDVOSB Issue Date	
SDVOSB Expiration Date	

- Offeror Identity**. The Offeror submitting the Proposal shall be the same entity that is certified by the Texas State Comptroller of Public Accounts, AND if applicable as verified by the US Veterans Administration.
- Certification Status**. Offeror's certification(s) must be active on or before the Solicitation's due date for Proposals and shall not expire prior to the award and execution of any resulting contract.
- Confirmation of Certification(s)**. Upon receipt of this completed form, the City will confirm the Offeror's certification(s): State: <https://mycpa.cpa.state.tx.us/tpasscmbsearch>. Federal: <https://www.vip.vetbiz.gov/>. The City will direct any questions concerning an Offeror's State or Federal certification status to the Offeror's contact person as designated on the Offer Form of their Proposal.
- Misrepresentation**. If the City determines that the Offeror requesting this preference is not certified by the State or Federal government if applicable, the Offeror will not receive the preference points. If the City determines that this misrepresentation was intentional, the City may also find the Offeror not responsible and may report the Offeror to the Texas State Comptroller of Public Accounts or if applicable to the US Veterans Administration. If the misrepresentation is discovered after contract award, the City reserves the right to void the contract.

Section 0900: SUBCONTRACTING/SUB-CONSULTING UTILIZATION FORM

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

SOLICITATION NUMBER:
SOLICITATION TITLE:

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			
City Vendor ID Code			
Physical Address			
City, State Zip			
Phone Number		Email Address	
If the Offeror City of Austin M/WBE certified?	<div><input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES Indicate one: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture</div>		

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.

Name and Title of Authorized Representative (Print or Type)

Signature/Date

Section 0905: SUBCONTRACTING/SUB-CONSULTING UTILIZATION PLAN

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

SOLICITATION NUMBER:
SOLICITATION TITLE:

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.

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

PROCUREMENT PROGRAM

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

SOLICITATION NUMBER:

SOLICITATION TITLE:

- ☐ **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.

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

SOLICITATION NUMBER:
SOLICITATION TITLE:

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

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

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

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

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

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

Reviewing Counselor

Date

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

Director/Assistant Director or Designee

Date

**CITY OF AUSTIN
PURCHASING OFFICE
INFORMATION TECHNOLOGY STANDARD PURCHASE TERMS AND CONDITIONS**

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

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all Deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **DATA LOCATION**: The Service Provider shall provide its Services to the City and its end users solely from data centers in the U.S. Storage of City Data at rest shall be located solely in data centers in the U.S. The Service Provider shall not allow its personnel or contractors to store City Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The service provider shall permit its personnel and contractors to access City data remotely only as required to provide technical support. The service provider shall provide technical user support on a 24/7 basis unless otherwise prohibited in this contract.
4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the Deliverables under reservation and no tender of a bill of lading will operate as a tender of Deliverables.
5. **TITLE & RISK OF LOSS**: Title to and risk of loss of the Deliverables shall pass to the City only when the City actually receives and accepts the Deliverables.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the Deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the Deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of Deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **PLACE AND CONDITION OF WORK**: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.
10. **WORKFORCE**

**CITY OF AUSTIN
PURCHASING OFFICE
INFORMATION TECHNOLOGY STANDARD PURCHASE TERMS AND CONDITIONS**

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
- i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
 - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.
- D. ***Subcontractor Disclosure:*** *The Service Provider shall identify all of its strategic business partners related to services provided under this contract, including but not limited to all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the service provider, and who shall be involved in any application development and/or operations.*
- E. **Background Checks:** The Service Provider shall conduct criminal background checks and not utilize any staff, including Subcontractors, to fulfill the obligations of the Contract who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Service Provider shall promote and maintain an awareness of the importance of securing the City's information among the service provider's employees and agents.
- F. **Non-disclosure and Separation of Duties:** The Service Provider shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of City data to that which is absolutely necessary to perform job duties.
- G. **Right to Remove Individuals:** The City shall have the right at any time to require that the Service Provider remove from interaction with City any Service Provider representative who the City believes is detrimental to its working relationship with the Service Provider. The City shall provide the Service Provider with notice of its determination, and the reasons it requests the removal. If the City signifies that a potential security violation exists with respect to the request, the Service Provider shall immediately remove such individual. The Service Provider shall not assign the person to any aspect of the contract or future work orders without the City's consent.
11. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.
12. **INVOICES:**
- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

**CITY OF AUSTIN
PURCHASING OFFICE
INFORMATION TECHNOLOGY STANDARD PURCHASE TERMS AND CONDITIONS**

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

13. **PAYMENT:**

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the Deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. delivery of defective or non-conforming Deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.

**CITY OF AUSTIN
PURCHASING OFFICE
INFORMATION TECHNOLOGY STANDARD PURCHASE TERMS AND CONDITIONS**

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

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

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

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

15. **FINAL PAYMENT AND CLOSE-OUT:**

A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

B. The making and acceptance of final payment will constitute:

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

16. **IMPORT AND EXPORT OF DATA:** The City shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the service provider. This includes the ability for the City to import or export data to/from other service providers.

17. **AUDITS and RECORDS:**

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

B. Records Retention:

**CITY OF AUSTIN
PURCHASING OFFICE
INFORMATION TECHNOLOGY STANDARD PURCHASE TERMS AND CONDITIONS**

- i. Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.
 - ii. All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City
 - iii. The Contractor shall retain all Records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.
- C. The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.
- D. **Access to Security Logs and Reports:** The service provider shall provide reports to the City in a format as specified in the SLA agreed to by both the service provider and the City. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all City files related to this contract.
- E. **Data Center Audit:** The service provider shall perform an independent audit of its data centers at least annually at its expense, and provide a redacted version of the audit report upon request. The service provider may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

18. **Financial Disclosures and Assurances:**

The City may request and review financial information as the City requires to determine the credit worthiness of the Contractor, including but not limited to, annual reports, audited financial statements and reports, bank letters of credit or other credit instruments. Failure of the Contractor to comply with this requirement shall be grounds for terminating the Contract

19. **SUBCONTRACTORS:**

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
- i. requires that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

**CITY OF AUSTIN
PURCHASING OFFICE
INFORMATION TECHNOLOGY STANDARD PURCHASE TERMS AND CONDITIONS**

- iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.
20. **WARRANTY - PERFORMANCE:** Provider represents and warrants that: (a) Subscription Services provided under any SaaS Subscription Schedule and Non-subscription Services provide under a Statement of Work shall be provided and performed by qualified personnel in a professional, workmanlike manner, consistent with the prevailing standards of the industry; (b) it shall use industry best practices to fulfill its obligations under each SaaS Subscription Schedule and Statement of Work; and (c) any deliverables provided by Provider shall operate in conformance with the terms of this Master Software as a Service Agreement and the applicable SaaS Subscription Schedules and Statements of Work.
21. **WARRANTY – AUTHORITY:** Provider warrants that it has all authority necessary to provide for Client's access and use of the Subscription Services and the Non-subscription Services for the purposes set forth in this Master Software as a Service Agreement, in any SaaS Subscription Schedule and in any Statement of Work. Provider further represents and warrants that sale, licensing or use of any of the Subscription Services and of the Non-subscription Services furnished under this Agreement does not and shall not infringe, misappropriate or otherwise violate any Third Party's intellectual property rights.
22. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
- A. Recycled Deliverables shall be clearly identified as such.
 - B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

**CITY OF AUSTIN
PURCHASING OFFICE
INFORMATION TECHNOLOGY STANDARD PURCHASE TERMS AND CONDITIONS**

- D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
- E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
23. **WARRANTY – SOFTWARE**: Unless otherwise expressly provided in this Master Software as a Service Agreement, a SaaS Subscription Schedule or Statement of Work, Provider for itself and for and on behalf of its service providers, licensors, employees and agents warrants that: (a) the functions contained in the Subscription Services and in any Non-subscription Services provided under this Agreement shall meet Client's requirements, (b) the operation of the Subscription Services and any Non- subscription Services shall be uninterrupted and error free, (c) the Subscription Services and any Non- subscription Services shall have the capacity to meet the demand during the times specified in the Subscription Services Schedule(s) and in the Statement(s) of Work for Non-subscription Services and (d) the Subscription Services shall work with future Desktop Specifications, as well as future releases of web browsers, and shall have both forward and backward functionality. Provider shall be liable for any damages that Client may suffer arising out of use of, or inability to use, the Subscription Services and Non-subscription Services provided under this Agreement. Without limitation, Provider's indemnification obligation under this section includes any claim, damage, loss or expense arising from or in connection with any act by an agent, contractor, subcontractor, consultant, or employee of Provider that results in, or is intended by such agent, contractor, subcontractor, consultant, or employee to result in, harmful or otherwise unauthorized access into any of Client's systems, data, Client's Confidential Information, or Client's technology
24. **WARRANTY – SERVICES**: The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
- B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
- C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.
25. **WARRANTY – AGAINST UNDISCLOSED ILICIT CODE**: Provider warrants that, unless authorized in writing by Client, any software program or any other part or portion of the Subscription Services or Non-subscription Services developed by Provider, passed through to Client from Third Parties under this Agreement or provided to Client by Provider for use by Provider or Client shall:
- A. Not contain any hidden file;
- B. Not replicate, transmit or activate itself without control of a human operating the computing equipment on which it resides;

**CITY OF AUSTIN
PURCHASING OFFICE
INFORMATION TECHNOLOGY STANDARD PURCHASE TERMS AND CONDITIONS**

- C. Not alter, damage or erase any data or computer programs without control of a human operating the computing equipment on which it resides;
- D. Not contain any key, node lock, time-out or other function, whether implemented by electronic, mechanical or other means, that restricts or may restrict use or access to any software programs, Subscription Services or Non-subscription Services developed or data created under this Agreement, based on residency on a specific equipment configuration, frequency of duration of use or other limiting criteria;
- E. Not contain any virus, malicious, illicit or similar unrequested code, whether known or unknown to Provider; and
- F. Not use electronic self-help, including but not limited to preventing electronically Client's further or continued use of and/or access to the subscription Services, No-subscription Services or any software or other portion thereof.
- G. Notwithstanding any provision in this Agreement to the contrary, if any Subscription Service or Non-subscription Service has any of the foregoing attributes (collectively "Illicit Code"), Provider shall be in default of this Agreement, and no cure period shall apply unless approved by the City. At the request of and at no cost to Client, Provider shall remove any such Illicit Code from the licensed software as promptly as possible.
- H. To protect Client from damages that may be caused intentionally or unintentionally by the introduction of Illicit Code into Client's computer systems, no software may be installed, executed or copied onto Client's equipment without an express warranty to Client that Illicit Code does not exist. Such warranty shall be set forth on an exhibit attached to and made a part of this Agreement.
- I. Provider agrees that in the event of any dispute with Client regarding an alleged breach of this Agreement, Provider shall not use any type of electronic means to prevent or interfere with Client's use of any portion of the Subscription Services and Non-subscription Services. Provider understands that a breach of this provision could foreseeably cause substantial harm to Client and to numerous Third Parties having business relationships with Client.

26. DATA

- A. **Data Ownership:** The City will own all right, title and interest in its data that is related to the services provided by this contract. The service provider shall not access City user accounts or City data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this contract, or (4) at the City's written request.
- B. **Data Protection:** Protection of personal privacy and data shall be an integral part of the business activities of the service provider to ensure there is no inappropriate or unauthorized use of City information at any time. To this end, the service provider shall safeguard the confidentiality, integrity and availability of City information and comply with the following conditions:
 - i. The service provider shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.
 - ii. All data obtained by the service provider in the performance of this contract shall become and remain property of the City.
 - iii. All personal data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of the personal data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of this contract.
 - iv. Unless otherwise stipulated, the service provider shall encrypt all non-public data at rest and in transit. The City shall identify data it deems as non-public data to the service provider. The level of protection and encryption for all non-public data shall be identified and made a part of this contract.

**CITY OF AUSTIN
PURCHASING OFFICE
INFORMATION TECHNOLOGY STANDARD PURCHASE TERMS AND CONDITIONS**

- v. At no time shall any data or processes – that either belong to or are intended for the use of a City or its officers, agents or employees – be copied, disclosed or retained by the service provider or any party related to the service provider for subsequent use in any transaction that does not include the City.
 - vi. The service provider shall not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.
- C. **Compliance with Accessibility Standards:** The service provider shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973.
- D. **Security:** The service provider shall disclose its non-proprietary security processes and technical limitations to the City such that adequate protection and flexibility can be attained between the City and the service provider. For example: virus checking and port sniffing – the City and the service provider shall understand each other's roles and responsibilities.
- E. **Security in Compliance with Chapter 521 of the Texas Business and Commerce Code:** Service provider shall comply with all requirements under Chapter 521 of the Texas Business and Commerce Code, including but not limited to being responsible for a program that protects against the unlawful use or disclosure of personal information collected or maintained in the regular course of business. The program shall include policies and procedures for the implementation of administrative, technical, and physical safeguards, and shall also address appropriate corrective action for events of any security breach and proper methods of destroying records containing sensitive personal information.
- F. **Security Incident or Data Breach Notification:** The service provider shall inform the City of any security incident or data breach.
 - i. **Incident Response:** The service provider may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the City should be handled on an urgent as-needed basis, as part of service provider communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.
 - ii. **Security Incident Reporting Requirements:** The service provider shall report a security incident to the appropriate City identified contact immediately as defined in the SLA.
 - iii. **Breach Reporting Requirements:** If the service provider has actual knowledge of a confirmed data breach that affects the security of any City content that is subject to applicable data breach notification law, the service provider shall (1) promptly notify the appropriate City identified contact within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.
- G. **Breach Responsibilities:** This section only applies when a data breach occurs with respect to personal data within the possession or control of service provider.
 - i. The service provider, unless stipulated otherwise, shall immediately notify the appropriate City identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.
 - ii. The service provider, unless stipulated otherwise, shall promptly notify the appropriate City identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a data breach. The service provider shall (1) cooperate with the City as reasonably requested by the City to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

**CITY OF AUSTIN
PURCHASING OFFICE
INFORMATION TECHNOLOGY STANDARD PURCHASE TERMS AND CONDITIONS**

- iii. Unless otherwise stipulated, if a data breach is a direct result of the service provider's breach of its contract obligation to encrypt personal data or otherwise prevent its release, the service provider shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by state law; (3) a credit monitoring service required by state (or federal) law; (4) establishing a website or a toll-free number and call center for affected individuals required by state law – all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$201 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by service provider based on root cause; all [(1) through (5)] subject to this contract's limitation of liability.
27. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
28. **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.
29. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
30. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
31. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
- 30.A. **TERMINATION AND SUSPENSION OF SERVICE:**

**CITY OF AUSTIN
PURCHASING OFFICE
INFORMATION TECHNOLOGY STANDARD PURCHASE TERMS AND CONDITIONS**

- A. In the event of a termination of the contract, the service provider shall implement an orderly return of City data in a CSV or another mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of City data.
- B. During any period of service suspension, the service provider shall not take any action to intentionally erase any City data.
- C. In the event of termination of any services or agreement in its entirety, the service provider shall not take any action to intentionally erase any City data for a period of:
- o 10 days after the effective date of termination, if the termination is in accordance with the contract period
 - o 30 days after the effective date of termination, if the termination is for convenience
 - o 60 days after the effective date of termination, if the termination is for cause
- After such period, the service provider shall have no obligation to maintain or provide any City data and shall thereafter, unless legally prohibited, delete all City data in its systems or otherwise in its possession or under its control.
- D. The City shall be entitled to any post-termination assistance generally made available with respect to the services unless a unique data retrieval arrangement has been established as part of the SLA.
- E. The service provider shall securely dispose of all requested data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the City. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the City.
32. **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.
33. **DELAYS:**
- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.
- C. **Change Control and Advance Notice:** The service provider shall give advance notice (to be determined at the contract time and included in the SLA) to the City of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics. It usually includes a new version number.
34. **INDEMNITY:**
- A. Definitions:

**CITY OF AUSTIN
PURCHASING OFFICE
INFORMATION TECHNOLOGY STANDARD PURCHASE TERMS AND CONDITIONS**

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
 - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
- ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

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

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

A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

**CITY OF AUSTIN
PURCHASING OFFICE
INFORMATION TECHNOLOGY STANDARD PURCHASE TERMS AND CONDITIONS**

- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

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

36. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
37. **NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.

Notification of Legal Requests: The service provider shall contact the City upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the City's data under this contract, or which in any way might reasonably require access to the data of the City. The service provider shall not respond to subpoenas, service of process and other legal requests related to the City without first notifying the City, unless prohibited by law from providing such notice.

**CITY OF AUSTIN
PURCHASING OFFICE
INFORMATION TECHNOLOGY STANDARD PURCHASE TERMS AND CONDITIONS**

38. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
39. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's' ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.
40. **CONFIDENTIALITY**: In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to 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.
41. **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.
42. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
43. **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.
44. **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

**CITY OF AUSTIN
PURCHASING OFFICE
INFORMATION TECHNOLOGY STANDARD PURCHASE TERMS AND CONDITIONS**

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.

45. **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.
46. **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.
47. **ASSIGNMENT-DELEGATION:** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
48. **WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
49. **MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
50. **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.
51. **DISPUTE RESOLUTION:**
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

**CITY OF AUSTIN
PURCHASING OFFICE
INFORMATION TECHNOLOGY STANDARD PURCHASE TERMS AND CONDITIONS**

- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.
52. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
53. **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.
54. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

55. **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.
56. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

**CITY OF AUSTIN
PURCHASING OFFICE
INFORMATION TECHNOLOGY STANDARD PURCHASE TERMS AND CONDITIONS**

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

57. EQUAL OPPORTUNITY

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

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

- A. Definitions. As used in this paragraph –
- i. "Component" means an article, material, or supply incorporated directly into an end product.
 - ii. "Cost of components" means -
 - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
 - iii. "Domestic end product" means-
 - (1) An unmanufactured end product mined or produced in the United States; or
 - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
 - iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
 - v. "Foreign end product" means an end product other than a domestic end product.

**CITY OF AUSTIN
PURCHASING OFFICE
INFORMATION TECHNOLOGY STANDARD PURCHASE TERMS AND CONDITIONS**

- vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

59. PROHIBITION OF BOYCOTT ISRAEL VERIFICATION

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

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

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

The following Supplemental Purchasing Provisions apply to this solicitation:

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

All requests for explanations or clarifications must be submitted in writing to sai.xoomsai@austintexas.gov and/or paula.barriffe@austintexas.gov by 7:00 am, local time, 10/23/2019.

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

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

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

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

OR

PURInsuranceCompliance@austintexas.gov

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

- i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$1,000,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage
- ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$1,000,000 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.

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

- (b) Contractor/Subcontracted Work.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.
 - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
- iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$1,000,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
- iv. **Professional Liability:** The Contractor shall provide coverage, at a minimum limit of \$5,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.

If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.
- v. **Cyber Liability Insurance:** coverage of not less than \$5,000,000 each claim and \$5,000,000 annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from (1) breach of network security, (2) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (3) invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers (5) the transmission of malicious code, and (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy.
- C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

3. PROPOSAL / RESPONSE BOND: ("BOND")

- A. All Offers shall be accompanied by a Proposal / Response Bond in an amount of five percent (5%) of the total Offer. The Proposal / Response Bond must have a Power of Attorney attached, issued by a solvent surety authorized under the laws of the State of Texas and acceptable to the City.
- B. The Bid / Proposal / Response Bond accompanying the Offer of the apparent successful Offeror will be retained until a Contract is awarded and the successful Offeror executes the Contract and furnishes any required bonds and insurance, after which the Bid / Proposal / Response Bond will be returned to the Offeror. The Bid / Proposal / Response Bond provided by the next lowest or next Best

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

Offeror will be retained until a Contract is awarded. All other Bid / Proposal / Response Bonds will be returned within a reasonable amount of time necessary to make an award recommendation.

4. **PERFORMANCE BOND:**

- A. The Contractor shall provide a Performance Bond in an amount of \$700,000 within 14 calendar days (14 unless a different period is inserted) after notification of award. The Performance Bond serves as security for the faithful performance of all of the Contractor's obligations under the Contract. The Performance Bond shall be issued by a solvent company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by the City pursuant to applicable law. The Surety must obtain reinsurance for any portion of the risk that exceeds 10% of the Surety's capital and surplus. For bonds exceeding \$100,000, the Surety must also hold a certificate of authority from the U.S. Secretary of the Treasury or have obtained reinsurance from a reinsurer that is authorized as a reinsurer in Texas and holds a certificate of authority from the U.S. Secretary of the Treasury.
- B. The Performance Bond shall remain in effect throughout the term of the Contract and shall be renewed for each respective extension.

5. **TERM OF CONTRACT:**

- A. The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of approximately sixty-six months to include length of time for project implementation period and **five years** of maintenance and support. Maintenance and support period shall not begin until after the delivery has been accepted. The Contract may be extended beyond the initial term for up to **three additional 12 month periods** at the City's sole option. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
- B. Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract. Any hold over period will not exceed 120 calendar days unless mutually agreed on by both parties in writing.
- C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above.

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

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

- A. Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed to the below address:

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

	City of Austin
Department	Austin Energy
Attn:	Account Payable
Address	721 Barton Springs Rd.
City, State Zip Code	Austin, TX 78704

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

8. FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003 (FACTA)

- A. The City requires Offerors submitting Offers on any Solicitation which may utilize or access City Customer Account Information, directly or indirectly, to provide a signed affidavit certifying that the Offeror has reviewed the red flags that the City has identified as potential indicators of unauthorized access to consumer information and malicious account activity and agrees to exercise due diligence, in accordance with reasonable policies and procedures, to detect, deter and prevent the risk of identity theft (See Attachment A, FACTA Affidavit of Compliance). By signing the Affidavit, the Offeror affirms to the City that it maintains its own identity theft prevention program. The City may only award a Contract, to which this provision applies, once the signed and notarized Affidavit is received.
- B. The following red flags have been identified by the City as potential indicator of unauthorized access to consumer information and malicious account activity:
- i. Documents provided by a customer or potential customer to verify identification appear altered or forged.
 - ii. The photo or physical description on an identification document ("ID") is not consistent with the appearance of the customer.
 - iii. Other information given to open the account is not consistent with the ID of the customer
 - iv. An application or supporting document appears to have been forged or altered, or gives the appearance of having been destroyed and reassembled.
 - v. The ID is inconsistent with external information sources; i.e., the address does not match a consumer report, or a social security (SS) number has not been issued or is listed on the SS Administration Death Master File.
 - vi. The ID provided is associated with an existing identity theft case on file.
 - vii. The SS number is the same as customers opening other accounts (or previously used to open an account when the customer states that they have not previously had an account.)
 - viii. The customer fails to provide all personal identification information upon request.
 - ix. The ID is inconsistent with existing records.
 - x. Change of billing address is followed by multiple change requests to the account.
 - xi. Payments are made in a manner associated with fraud. For example, a deposit or initial payment is made and no payments are made thereafter.
 - xii. Existing account with a stable history shows irregularities.
 - xiii. An account that has been inactive for a reasonable period of time is suddenly used.
 - xiv. The utility is notified of unauthorized changes or transactions in connection with an account.

9. **DATA HANDLING CONTROLS:** Contractor hereby agrees to the "Data Handling Controls" attached as Exhibit A to this Contract, which constitute the Contractor's minimum required data security program to safeguard the integrity of City Data received by Contractor.

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

10. **NETWORK ACCESS:** Contractor shall comply with Austin Energy's Network Connection Agreement Section 0801. Contractor shall submit Austin Energy's Remote Access Request Form for each Contractor or Subcontractor requiring access to the Austin Energy Network.
11. **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING:**
- A. On June 14, 2018, the Austin City Council adopted Ordinance No. 20180614-056 replacing Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). The City requires Offerors submitting Offers on this Solicitation to certify that the Offeror has not in any way directly or indirectly had communication restricted in the ordinance section 2-7-104 during the No-Lobbying Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at: https://assets.austintexas.gov/purchase/downloads/New_ALO_Ordinance_No_20180614-056.pdf and is also included in the Solicitation, [Section 0200 V2, Solicitation Instructions June 26, 2018](#).
12. **WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):**
- A. Contractors are required to obtain a certified criminal background report with fingerprinting (referred to as the "report") for all persons performing on the contract, including all Contractor, Subcontractor, and Supplier personnel (for convenience referred to as "Contractor's personnel").
- B. The report may be obtained by reporting to one of the below governmental entities, submitting to fingerprinting and requesting the report [requestors may anticipate a two-week delay for State reports and up to a four to six week delay for receipt of a Federal report].
- i. Texas Department of Public Safety for any person currently residing in the State of Texas and having a valid Texas driver's license or photo ID card;
- ii. The appropriate governmental agency from either the U.S. state or foreign nation in which the person resides and holds either a valid U.S. state-issued or foreign national driver's license or photo ID card; or
- iii. A Federal Agency. A current Federal security clearance obtained from and certified by a Federal agency may be substituted.
- C. Contractor shall obtain the reports at least 30 days prior to any onsite work commencement. Contractor also shall attach to each report the project name, Contractor's personnel name(s), current address(es), and a copy of the U.S. state-issued or foreign national driver's license or photo ID card.
- D. Contractor shall provide the City a Certified Criminal Background Report affirming that Contractor has conducted required security screening of Contractor's personnel to determine those appropriate for execution of the work and for presence on the City's property. A list of all Contractor Personnel requiring access to the City's site shall be attached to the affidavit.
- E. Upon receipt by the City of Contractor's affidavit described in (D) above and the list of the Contractor's personnel, the City will provide each of Contractor's personnel a contractor ID badge that is required for access to City property that shall be worn at all times by Contractor's personnel during the execution of the work.
- F. The City reserves the right to deny an ID badge to any Contractor personnel for reasonable cause, including failure of a Criminal History background check. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor's reports. 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 ten (10) calendar days of the receipt of notification of denial.

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

- G. Contractor's personnel will be required to wear the ID badge at all times while on the work site. Failure to wear or produce the ID badge may be cause for removal of an individual from the work site, without regard to Contractor's schedule. Lost ID badges shall be reported to the City's Contract Manager. Contractor shall reimburse the City for all costs incurred in providing additional ID badges to Contractor Personnel.
 - H. ID badges to enter and/or work on the City property may be revoked by the City at any time. ID badges must be returned to the City at the time of project completion and acceptance or upon removal of an individual from the work site.
 - I. 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.
 - J. The Contractor shall retain the reports and make them available for audit by the City during regular business hours (reference paragraph 17 in Section 0300, entitled Right to Audit).
13. **INTERLOCAL PURCHASING AGREEMENTS:** (applicable to competitively procured goods/services contracts).
- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.
 - B. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.
14. **OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests throughout the world in and to the Deliverables.
- A. **Patents:** As to any patentable subject matter contained in the Deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.
 - B. **Copyrights:** As to any Deliverable containing copyrighted subject matter, the Contractor agrees that upon their creation, such Deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such Deliverables, provided however, that nothing in this Paragraph 36 shall negate the City's sole or joint ownership of any such Deliverables arising by virtue of the City's sole or joint authorship of such Deliverables. Should by operation of law, such Deliverables not be considered work made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of Austin) all worldwide right, title, and interest in and to such Deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such Deliverables to the City or at such other time as the City may request.

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

- C. **Additional Assignments:** The Contractor further agrees to, and if applicable, cause each of its employees to execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns, and nominees, the sole and exclusive right, title, and interest in and to the Deliverables. The Contractor's obligations to execute acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 36 A., B., and C. shall continue after the termination of this Contract with respect to such Deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the Deliverables, but should arise to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph above.
15. **CONTRACT MANAGER:** The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Samuel Tesfaye
Energy Market Analyst
Samuel.Tesfaye@austinenergy.com
(512) 322-6073

CONTRACT ADMINISTRATOR: The following person is designated as Contract Administrator, and will act as the contact point for contractual and financial issues between the City and the Contractor during the term of the Contract:

Elizabeth Corey
Contract Management Specialist IV
Elizabeth.corey@ausinenergy.com
(512) 322-6531

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

Section 0500 – Scope of Work
Solicitation No. RFP 1100 PAX3150REBID

Description: Cloud Hosted Energy Trading & Risk Management (ETRM) Solution

1. Introduction

Austin Energy within the City of Austin is the nation's 8th largest publicly owned electric utility and has been serving Austin since 1895. We serve more than 448,000 customer accounts and more than 1 million residents in Greater Austin. Our operations are funded entirely through energy sales and services, and the utility operates within the Electric Reliability Council of Texas (ERCOT) statewide market. Austin Energy further supports the City of Austin and its other departments through an annual transfer into the general fund of more than \$100 million.

2. Purpose

Austin Energy is requesting proposals from qualified and experienced solution providers in energy trading and risk management, to provide a turnkey Energy Trading Risk Management (ETRM) solution.

The ETRM solution must be able to capture, track, monitor, value, and report, the commodities, transaction types, and instruments used by Austin Energy in the ERCOT market. Additionally, the system must be able to include load, generation, and long-term Power Purchase Agreement's (PPAs) as well as third party transactions in the position report and in portfolio risk exposure calculations. Gas scheduling must also be a part of the ETRM solution or be an integrated module. Lastly, Austin Energy requires the ETRM solution to support creation of new instrument types; provide data extraction and interfacing capabilities with other applications.

Proposals that include a custom built, system in development, or system in beta stages will be deemed non-responsive and will not be considered.

3. Background

Austin Energy is engaged in the generation, distribution, and transmission of electricity to over 448,000 Residential, Commercial, and Industrial customers in both Travis and Williamson Counties. Austin Energy's governing body is the City Council of Austin. Austin Energy has approximately 4,600 MW of generation capacity, either wholly owned or procured through long term Power Purchase Agreements. The diverse portfolio includes nuclear, coal, natural gas, biomass, wind and solar (currently, the generation mix is ~38% renewable energy). Austin Energy's current peak load is 2,878 MWs.

Austin Energy participates in all aspects of the ERCOT wholesale power market for purposes of serving its load and maximizing the value of its resources. This includes participating in forward energy commodity markets (bilaterally and exchange based), the ERCOT Real-time market, Day-Ahead market, ancillary services, and Congestion Revenue Rights (CRR) markets. Austin Energy's transactional activity in the market spans intra-day transactions to tenors as far as 60 months. Additionally, we have power agreements and assets whose life go beyond the 60 months hedging provision and may be captured within Austin Energy's ETRM if beneficial. Austin Energy provides Emergency Response Service (ERS) for commercial and industrial customers and other utility load management programs as well as Qualified Scheduling Entity (QSE) services.

Austin Energy has a robust Energy Risk Management program with comprehensive risk reporting for its energy market operations activity. The ETRM solution must accommodate instrument types and products consistent with the ERCOT energy market; provide easy data extraction; and include flexible reporting functionality to meet Austin Energy's internal, external regulatory, and management reporting requirements. The ETRM solution must support functionality for front, mid, and back offices. It must have strong security and audit trails; high reliability, business continuity and robust disaster recovery; strong customer service; and comprehensive support as described in this Solicitation.

4. Current ETRM System Business Process

Business processes breakdown for the Front, Mid, and Back Office are as follows:

Note: The Functional Requirements breakdown and Business Process flow diagram can be found in Appendix A.

1. **Front Office:** The Front Office is responsible for managing risks in the energy portfolio.

- i. Set-Up: With respect to the ETRM solution set-up, the Front Office defines the company structure, book hierarchy, timeframe, commodities, markets, and instrument types. The Front Office enters transactions into the system and ensures that the transaction data is updated as needed. All bilateral transactions including real-time, day ahead, balance of the month, and forward month contracts are entered into the ETRM solution.
- ii. Commodity, Pricing Structures, and Transaction Types: The following commodities must be captured, valued, tracked, and invoiced as physical and financial instruments: power, natural gas, and Renewable Energy Credits (RECs) and Emission allowances.
- iii. Power Transaction Types: The pricing structures that must be captured are: fixed price, index price, tiered pricing, options, spark spreads, basis, and heat rate options (an option where the power strike price is set at a relationship to a natural gas price). Power Purchase Agreements (PPAs) must be captured in the solution as well.
- iv. Other related power instruments that must be captured, valued, tracked, and invoiced include: Congestion Revenue Rights (CRR), Pre-Assigned Congestion Revenue Rights (PCRRs), Capacity, Ancillaries. CRRs must include ERCOT products, such as Point-to-Point (PTP) Options and PTP Obligations. Similarly, other products like ancillaries must handle ERCOT specific products, which include but may not be limited to regulation up, regulation down, non-spin, and spinning reserves. Two other valuable services to capture are QSE services and Emergency Response Service (ERS) that Austin Energy provides to its large customers.
 1. For power, the solution must be able to handle standard products for hourly, off-peak, weekend off-peak, on peak, monthly, quarter, and 'strip' time periods. The solution must also handle customized transactions with different prices and volumes for different time periods.
 2. For emission allowances and RECs, the solution shall capture vintage and serial numbers.
- v. Physical Gas Transaction Types: The following natural gas products and instruments must be captured: fixed price, index price, tiered prices, interruptible/firm, swing/full requirements, take or pay, contracts, min and max delivery, basis spreads, calendar spreads, banked gas, sell back (redelivery), capacity (pipeline contracts, capacity release from other shippers), storage and balancing. The solution must be able to handle same day, next day, multiple day, monthly and 'strip' transactions. The solution must also handle customized transactions with different prices and volumes for different time periods. It must be able to handle storage injection and withdrawal costs, fees for storage, and inventory levels. Austin Energy needs to have gas-scheduling functionality integrated into the ETRM solution. In a new ETRM solution, Austin Energy will need an integrated gas scheduling module and for the gas scheduling module to interface to the pipeline electronic bulletin boards.
- vi. Financial (Power & Gas) Derivatives: The ETRM solution must handle financial derivatives such as fixed for floating swaps, floating for floating swaps, basis swaps, futures, and a wide variety of options. The option types need to include: European options (option with a single exercise date at end of the period), American options (option can be exercised any time during the period), exotic options (barrier, binary, swing), dual strike options (such as temperature and market price) and 'swaptions' (option on a financial swap). Positions must

be available as: notional amount, in the money/out of the money, and the 'Greeks' (delta, gamma, vega and theta positions).

- vii. Book Structure: Given that Austin Energy offers energy and ancillaries into ERCOT separate from load, the solution must have the capability to provide both an integrated portfolio, as well as separate generation and load books. Further, there must be sub-books that can be developed, for different generating units, PPAs, or different types of load commitments (e.g. on-system load vs. off-system sales). Further, the system must support internal transfers, to facilitate the movement of transactions between books with minimal effort.
 - viii. Flexible Deal Entry: The Front Office requires flexible deal entry so that as instrument types and products change over time, they can be easily entered into the new ETRM solution. Additionally, the Front Office (and Middle Office) requires the solution to support scenario analysis, where "what if" deals or prices can be entered and viewed to see their financial and volumetric impact, without changing the official production system. This must also show the changing delta, gamma, vega and theta change.
 - ix. Interfaces: Austin Energy requires the new ETRM solution to interface via a well-defined API as well as other interfaces as described in the Technical Requirements in order to pull and push data such as transactions and prices. Deals entered into the ETRM solution must also flow into other systems and models. For example, the bilateral physical power transactions must be retrievable via the API to be imported into Austin Energy's proprietary power scheduling system. The interfaces shall support communication with other Austin Energy systems that create data for or use data from ETRM solution that are used to value Austin Energy's generation and load portfolio.
- 2. Middle Office:** The Middle Office is responsible for energy market transaction life cycle management, reporting market exposure associated with transactions and the portfolios, and monitoring compliance with policies. The Middle Office represents the largest number of ETRM solution users; this group is the primary user of the ETRM solution.
- i. Set Up: The Middle Office provides internal risk controls and energy risk reporting. In this capacity, the Middle Office sets up the ETRM solution user access and authorizations, audit trail, limits, Value at Risk (VAR) and other risk based metrics, workflows, counterparty and contracts, and market price interfaces.
 - ii. Transaction Life cycle Management: Once the solution is set up, the Middle Office is responsible for all steps of transaction management until expiration and settlement. The solution shall provide robust transaction management functionality, where every transaction type entered by the Front Office can be confirmed, valued, tracked, reported and invoiced in the solution.
 - iii. Risk & Limit Reporting: Additionally, the Middle Office will use the ETRM solution to monitor and report risk exposures and limits in order to comply with Austin Energy's Energy Risk Management program policies. These include daily volumetric and financial position reports, portfolio valuations (marking to market); counterparty credit risk exposures, and various industry standard value and cash flow based risk metrics that may best meet Austin Energy's needs. (e.g. value at risk, potential future exposure, cash-flow-at-risk etc.)
 - iv. Optional: Stochastic Risk Analytics Module for the whole energy portfolio: Austin Energy is also interested in solutions that include a probabilistic risk analytics module that can be implemented in future phases of the ETRM solution. The module can be part of the ETRM solution or a robust standalone system from a third party, which can be integrated with the ETRM solution. The third party solution must have been successfully implemented with the main ETRM solution multiple times by different clients. This module must be capable of modeling probabilistic distributions and risk metrics for Austin Energy's thermal and renewable generation (owned & contracted) assets and load obligations, nodal prices and run advanced simulations to provide meaningful analyses for Austin Energy's market and price

risk exposure for Power Supply Adjustment (PSA) rate in ERCOT power market for the 1-60 months forward.

- v. Data Extraction: The Middle Office requires extraction of data in standard non-proprietary formats automated price data download, and ease in developing adhoc reports.

3. Back Office

- i. Financial Reporting: The Back Office is responsible for financial reporting associated with energy market transactions. The Back Office uses the transaction valuation information for Governmental Accounting Standards Board (GASB) financial reporting and collateral posting requirements (margin management). All transaction types must be valued in the ETRM solution.
 - ii. Accounting: The Back Office is also responsible for accounting and uses the ETRM solution generated invoices to record payables and receivables in the City of Austin's general ledger accounting system. There is an interim step to convert invoices from the ETRM solution to payable invoices in another accounting package. Therefore, the ability to automate the invoice creation in the accounting system would be valuable.
4. There are approximately 12-15 active users of the current ETRM system. It is anticipated that the new solution will have same level of active users however; it may have additional report only users. The functional areas of the current ETRM system are depicted in the "Current ETRM System" diagram, illustrating the Front, Middle, and Back Offices' use of the ETRM system. The functional areas included in the map are:
- i. System Set-Up
 - ii. Counterparty & Credit
 - iii. Transaction Capture
 - iv. Confirmations
 - v. Natural Gas Scheduling
 - vi. Price Data
 - vii. Mark to Market
 - viii. Settlement
 - ix. Invoicing
 - x. Risk Reporting

Function	Approximate Number of Users
Front Office	10
Middle Office	10
Back Office	2
Gas Scheduling	2 (Part of Front Office)
Report Only	10
IT	2

5. Appendix A, Functional Requirements - Technical Requirements describe Austin Energy currently uses the existing ETRM solution. Austin Energy anticipates that the current separation of duties between Front, Mid, and Back offices in the current ETRM system would be implemented similarly in a new ETRM solution.

5. Contractor's Responsibilities

1. Implementation Services

- i. Contractor shall provide integration and implementation services to assist Austin Energy in the implementation and configuration of the software application based on the Functional Requirements (Appendix A).
- ii. Contractor shall review and evaluate existing reporting and business processes and shall work with Austin Energy to apply common best practices within the solution in order to streamline reporting and improve collaboration between work groups.
- iii. Contractor shall create and/or configure reports for Mid Office to comply with internal and external regulatory and management reporting. These reports include but are not limited to the daily position report, risk limits report, mark to market, realized and unrealized P&L by book, instrument type, for sales and purchases, and City Council spending authority limit report. Report generation should accommodate standard or ad hoc reports with start and end dates to be defined by the user, as well as be modifiable for the user to add or remove any content as needed.
- iv. Contractor shall work with Austin Energy to identify all interfaces that are necessary to achieve maximum functionality of the application.
- v. Contractor shall assist Austin Energy in the data migration of current and open transactions, as well as five years of historical transactions from the legacy OpenLink Endur 12.3 application to comply with Austin Energy records retention policies.
- vi. Within two weeks of the Project Kick-off, the Contractor shall work with the Austin Energy Project Manager (PM) to develop a work breakdown structure following Project Management Body of Knowledge (PMBOK) guidelines and best practices for all deliverables and an operational deployment plan including but not limited to tasks addressing the following:
 - A. Work with Austin Energy PM to draft implementation plan and Microsoft Project (MS) schedule (based on prior successful implementations & Austin Energy resource availability)
 - B. Propose timeline that includes both Contractor's and Austin Energy's tasks down to the work package level in MS Project.
 - C. Unit Test Data Migration Procedures in the Development Environment.
 - D. Provide knowledge transfer of the upgrade, migration, and implementation processes to Austin Energy personnel.
 - E. Assist Austin Energy personnel with installation of software, custom components, and interfaces in Austin Energy's Development, Test, and Production Environments.
 - F. Provide technical support during Austin Energy's performance of System Acceptance Testing.
 - G. Configure identified Users in the Production environment.
 - H. Assist Austin Energy with assessment of Project Risks
 - I. Contractor working with the Austin Energy project team shall analyze potential risks to the project development and operation and propose mitigation plans to be delivered and documented as part of the Project Plan in an on-going fashion.

2. Key Personnel

- i. For any personnel identified as key personnel assigned to this engagement, including, but not limited to the Contractor's Project Manager, Contractor shall resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.
- ii. The assigned Project Manager shall have a minimum of five (5) years of experience with the proposed ETRM solution and a minimum of five (5) years of related Information Technology Project Management experience.

- iii. Austin Energy's Contract Manager retains the right to approve the assigned Project Manager and Key Personnel and to request a replacement.
- iv. Austin Energy's Contract Manager shall approve any change in the assigned Key Personnel and the replacement shall have equivalent experience with comparable responsibilities, size and scope.
- v. The Project Manager shall act as an authorized representative of the Consultant.
- vi. The Project Manager shall manage and coordinate contract performance and serve as a principal point of contact for communications with Austin Energy.

3. Conceptual Architectural Design

- i. Contractor shall develop a conceptual design, for the solution that describes the required technology and data components of the solution, the required processes and staffing to support the solution. The design shall leverage Austin Energy's existing architectures and position the systems interfaces for a smooth transition.
- ii. The design shall include the agreed upon disaster recovery and business continuity considerations that ensure the efficient and effective recovery and/or continued successful operation of the solution under the loss of key infrastructure components. This design shall be captured in architectural diagrams showing all required hardware and software, data flows, network and firewall ports and services.
- iii. Any changes to the agreed upon conceptual design will be reviewed and approved by Austin Energy's Enterprise Architecture team prior to beginning development.

4. System Design

- i. The Contractor shall design the solution based on the Austin Energy's functional, technical, and business processing requirements. The Contractor shall conduct the necessary activities to facilitate the solution design by working with the appropriate Austin Energy functional and technical staff.

5. Systems Configuration

- i. The Contractor shall install, to a fully operational status, an agreed upon production version of all software in all environments (i.e. production, test, development).
- ii. The Contractor shall ensure all environments are maintained at the most current patch/upgrade level available from the software Contractor.
- iii. The Contractor shall configure all workflows, templates, portfolios, and business processes as defined in the Functional Requirements in Appendix A.

6. Interface Development

- i. The Contractor shall work with Austin Energy development staff to develop all the interim and permanent interfaces.
- ii. The Contractor shall provide complete integration architecture for the proposed Application(s). Details shall outline the following:
 - 1.0 How the proposed application(s) will integrate with Austin Energy's existing architecture, including software, hardware, operating systems, security measures, local PC/workstations, and in-flight data.
 - 2.0 Which Applications are fully integrated today, integration shortfalls that will require development, and third party Applications with their detailed interface method.
 - 3.0 Contractor shall also include details on what Applications, interfaces are batch oriented, and which are interactive or real-time.

7. Testing

- i. Contractor shall provide a detailed test plan 60 days post award which describes how the system will be fully tested, how results will be documented and managed, and how defects will be resolved. Include acceptance criteria or describe how acceptance criteria will be established for all areas of testing. Address how testers are prepared for, and conduct functional, regression, usability, and user acceptance testing.

- ii. The Contractor shall conduct functional, regression, unit testing, and assist Austin Energy in user acceptance testing.
- iii. The Contractor shall provide to the Austin Energy Project team a detailed description of their unit testing results of both the front and back end, for review and approval.
- iv. The Contractor shall work with Austin Energy to create test scripts based off the Functional Requirements and High-Level Business Process Requirements (Appendix A).
- v. Contractor shall provide Austin Energy project and business teams with access to the Test environment.
- vi. Contractor shall provide and maintain a test environment, which always mirrors the Production environment.
- vii. Contractor shall provide performance test results to meet the requirements defined in the SLA, including system response times in the User Interface, simulation runs, and reporting.
- viii. Contractor shall coordinate, execute, and verify all fixes identified during testing.
- ix. Contractor shall provide Austin Energy IT Service, Validation, & Testing team (SVT) with finalized and approved As-Built Detailed Business Requirements, Conceptual and Detailed Design documents.
- x. Contractor shall notify Austin Energy IT Project Team each time new or updated code is pushed into the testing environment.
- xi. Contractor shall develop and push releases into the test environment only after COB hours from Monday through Friday or Weekends.

8. Product Version Release Notes

- i. The Contractor will provide one copy of release notes at least 30 days in advance for the delivered version of the product in a digital format and provide reference sites for ongoing product information.
- ii. The Contractor shall provide documentation describing the process for applying upgrades and intermediate release packages for the software/firmware components of the proposed solution.

9. Product System Documentation

- i. The Contractor will provide one copy of product system documentation in a digital format before the release into Production.
 - A. Security Configurations
 - B. Application Security Management
 - C. Business Process Flow
 - D. Configurations/Setup
 - E. Business Rules/Setup
 - F. Conversions
 - G. Customizations
 - H. Database/Hardware Management
 - I. System Architecture
 - J. Functional Operations
 - K. Interfaces
 - L. Reports
 - M. System Maintenance and Support Processes
 - N. Testing plans, scenarios, scripts, and results
 - O. Interface Documentation, Development / Architectural Diagrams, failover considerations, Database schemas, & Disaster Recovery Plans.

10. Product User Documentation

- i. The Contractor shall provide at least one bound copy of complete user documentation and one set of complete digital copy of user documentation prior to acceptance testing. Austin Energy reserves the right to duplicate user documentation as necessary to be used solely for user workstation support.
- ii. The Contractor shall provide customized documentation needed to support the implementation, including but not limited to:
 - Knowledge Transfer and Training
 - Testing plans, scenarios, scripts, and results
 - Power User Manuals
 - Training materials
 - End User Manuals
- A. Prior to approval and Acceptance of a fully operational Production System by Austin Energy, the Contractor shall provide a final technical architecture and business process document. The document shall include baseline details of the final solution as implemented to include all (architecture/configurations/settings, database Third Party Hosted: hardware configurations and settings, server names,) software names, IP addresses, passwords, pass codes, keys and the relationships between all components for Development, Test, Training, and Production environments.

11. Training and Training Materials

- i. Within 60 days of contract award, the Contractor shall submit to Austin Energy Project Team a customized detailed description of training and a coordination plan. Including, but not limited to, the following:
 - A. Overview of proposed training plans/strategies for Front, Mid, and Back Offices to include options for on-Site or off-Site training Services, for the core project team, end-users, and technology personnel.
 - B. Roles and responsibilities of the software and/or implementation Contractor in the design and implementation of the training plan (e.g., development of customized training materials, delivering training to end-users).
 - C. Roles and responsibilities of the Contractor and Austin Energy in the design and implementation of the training plan.
 - D. Descriptions of Classes/Courses proposed in the training plan for Front, Mid, and Back Offices, as well as Austin Energy's IT staff. (The Contractor shall specify the unit of measure for its training (classes, days, etc.) and define the hours associated with these units of measure.) The Contractor must be very clear about exactly what training courses are included in the cost of the Proposal.
- ii. Systems Administration:
 - A. The Contractor shall propose product training for Austin Energy Systems Administrators staff, specific to system or application administration, maintenance, and troubleshooting. The training shall be conducted in Austin, Texas at a pre-selected Austin Energy site and according to a schedule determined by the Austin Energy. Training shall take place prior to the test environment build. The Contractor will provide one digital copy of the training materials in a digital format three weeks prior to the training class. Austin Energy reserves the right to duplicate training materials as necessary to be used solely for post-implementation user training and workstation support.
- iii. Train-the-Trainer:
 - A. The Contractor shall provide product end user training to Austin Energy's Front, Mid, and Back Office staff. The training will be conducted in Austin, Texas at a pre-selected Austin Energy site and according to a schedule approved by Austin Energy. The contractor will provide one copy of the training materials in a digital format three weeks prior to the training class. Austin Energy reserves the right to

duplicate training materials as necessary to be used solely for post-implementation user training and workstation support.

- iv. Knowledge Transfer
 - A. The Contractor shall provide a knowledge transfer plan that enables Austin Energy resources to understand, utilize, and support the new System. The Contractor's Knowledge Transfer Plan shall describe the Contractor's knowledge transfer strategy and activities including, but not limited to, core project team and power user training, technical training, working sessions, and end user training. Austin Energy has the following training approaches for end user training as described below:
 - A. Contractor shall describe in the knowledge transfer plan recommendations for Austin Energy employee expertise, training required for the implementation team and a timeline phasing of such need.
 - B. The Contractor shall provide the best practice processes to manage the full Development through to Production and Training life cycles.

12. Security

- i. Contractor shall implement a comprehensive security environment that addresses the typical security needs for use of the system and meets or exceeds Austin Energy's security requirements as identified in the Data Handling Controls (DHC), Exhibit A.
- ii. The Contractor shall provide a detailed description of how the proposed operating environment provides for confidentiality, integrity and availability.
- iii. Contractor shall comply with Austin Energy Data Handling Controls.
- iv. Contractor shall clearly describe steps taken to assure complete isolation of Austin Energy data within a shared environment to include data confidentiality, integrity, and availability in addition to identity and access management.

13. Maintenance Agreement

- i. All software maintenance and services maintenance contracts shall start after Go-Live and all defects resolved. The service and maintenance shall include all customized features as described in Appendix A.
- ii. The five-year support and maintenance plan shall include: methods of contact; support team availability; service levels; timeframes for supporting or delivering critical security patch updates, updated database or web browser versions after release; software/browsers/hardware supported; updated user guides on all major updates or system changes, and warranty information.
 - 1.0 Note that remote access to the City resources shall only be permitted when authorized users (required to have successfully passed a Criminal Background Investigation) are authenticated, data is encrypted across the network, and privileges are restricted.
- iii. The plan shall detail the roles/responsibilities and accountability (with Service Level Agreements) with any sub-contractors connected with the system, including its implementation and support, including any customized features.
- iv. The plan shall cover the change request process that exists for maintenance of the system or for any added features or services (ex. add a new template, create a custom report).
- v. Contractor support should include levels of service for both during and after business hours. Austin Energy business hours are defined as 6 am – 7 pm CST.
- vi. Contractor shall provide detailed hosting, maintenance and support program and Agreement. The Proposal shall specify the nature of any post-implementation and on-going support provided by the Contractor including:
 - A. Telephone support (e.g., include toll-free support hotline, hours of operation, availability of 24/7 hotline, etc.).
 - B. Special plans defining "levels" of customer support (e.g., gold, silver, etc.). Define what level of support is being proposed and

- costs for enhanced support options
- C. Response time for and definition of various types (levels of severity) of problems reported to the support network (e.g., critical issue response time).
- D. Delivery method of future upgrades and product enhancements including historical frequency of upgrades by module.
- E. Availability of user groups and their geographic areas. Describe any free trainings or user conferences included in the Contractors Maintenance and Support programs.
- F. Problem reporting and resolution procedures.
- G. Bug fixes and patches. Frequency and description for all during last two years.
- H. Support provided for third-party solutions.
- I. Other support (e.g., on-Site, remote dial-in, Web site access to patches, fixes and knowledge base).
- J. If the Contractor requires a separate maintenance, hosting or software Agreement, Contractor shall attach such Agreement.

14. Continuity of Operations/Disaster Recovery

- i. Contractor shall include all support policies that will apply to this implementation.
- ii. Provide disaster recovery and business continuity plan and services that ensure the efficient and effective recovery and/or continued successful operation of the solution under the loss of key infrastructure components.
- iii. The Contractor shall provide a system capable of meeting or exceeding the availability requirements herein.
- iv. The Contractor shall provide system architecture capable of recovering lost data caused by downtime that meets or exceeds the Recovery Point Objective (RPO) requirements herein.
- v. The Contractor shall provide a detailed description of how the following RPO) and Recovery Time Objective (RTO) for Business Continuity and Disaster Recovery shall be met.
 - o RPO: Prior day backup
 - o RTO: <= 24 hours
- vi. Contractor shall provide a proposed Disaster Recovery Plan, which meets the SLA requirements, including RTO & RPO and all specifications outlined within the Data Handling Controls (DHC).
- vii. Contractor shall provide plan updates to Austin Energy within three Business Days if changes are made to the plan.
- viii. The Contractor shall include disaster recovery and continuity of operations in the implementation and ongoing operations of all Applications hosted by the Contractor.
- ix. The Contractor shall successfully exercise the disaster recovery plan at least once during each calendar year during the Contract Term. A successful test shall be defined as operating entirely at the disaster recovery site for a period of no less than seventy-two (72) hours, at or above the availability metrics stated in the Agreement. The Contractor shall coordinate and receive prior approval from of the dates and times from Austin Energy Contract Manager.

15. Post Go-Live Support

- i. The Contractor shall provide 90 days of post-implementation support in accordance with the agreed upon SLA after go-live for each function/module before receiving final approval from Austin Energy.

6. Austin Energy's Responsibilities

1. Provide Project Management expertise
2. Provide in-house technical expertise to assist with the implementation as needed, using the Contractor provided documentation.
3. Work closely with the Contractor to affect a knowledge transfer of the implementation and support process to Austin Energy staff.
4. Evaluate and approve the Contractor's personnel, including all third party sub-contractors.
5. Initiate and approve changes through the purchasing contract modification process that may be subject to additional cost.
6. If applicable, provide access to Austin Energy's current Development and Test environments, as applicable.
7. If applicable, assist with deployment of application into the Production environment with onsite assistance from the Contractor.
8. Review, approve, and update test plans, scripts or outlines for the development and testing of the application/hardware solution.
9. Perform verification/smoke testing (or: a test audit)
10. Develop a detailed test plan and manage test resources, configure test tools, develop test scripts, record test scripts, execute test scripts, document errors, interpret results and make recommendations.
11. Provide final approver and Acceptance authority for the test results prior to being moved into the Production environment, and Post go-live verification/Acceptance.
12. Provide a Test coverage document Requirements Traceability Matrix (RTM) for review/approval that lists all the tests that map to all documented requirements.
13. Provide defect management using the JIRA defect management tool and grant account access to the Contractor for defect tracking, resolution and comments.
14. Provide weekly test status during test execution.
15. Participate in the disaster recovery testing and acceptance.

7. Deliverables/Milestones

Deliverables/Milestones	Description	Timeline (due/completion date, reference date, or frequency)	Performance Measure/ Acceptance Criteria	Contract Reference/ Section
Project Kick-off	On-site project kick-off with Project team to determine Project timeline and necessary resources.	Within 30 Days of Contract Completion	Austin Energy written approval	4.1.1
Project Schedule	Completion of Work Breakdown Structure to include resource allocations and associated level of effort with agreed upon timelines.	Within 30 days of Project Kick-off completion	Austin Energy written approval	4.3.2
Environment established and access provided to Austin Energy.	Completed cloud environment installation and appropriate access for Austin Energy.	Within 30 Days after Project Schedule completion	Austin Energy written approval	4.1.7

Detailed Requirements Complete	Review existing Functional Requirements, compare to system functionality, and adjust to fit the configurations or customizations of the tool.	2-4 months after Project Kick-off	Austin Energy written approval	Appendix A
Business Process Configurations Complete	Completion of Business Process configurations within ETRM as specified in 4.1 and Appendix A.	3-6 Months after environment is established	Austin Energy written approval	4.1 & Appendix A
Interfaces Complete	Completion of interfaces as specified in the Functional and Technical Requirements.	~6 Months after environment is established	Austin Energy written approval	Appendix A
Reporting Complete	Completion of report configuration as specified in the Functional Requirements.	3-6 Months after Configurations and Interfaces are complete.	Austin Energy written approval	4.1.1
Testing Complete	Completion of Functional, Regression, System Integration, Load, Performance, Security, Usability, Accessibility, User Acceptance and Disaster Recovery testing	2-4 months after all functionality has been implemented	Austin Energy written approval	4.1.7 & 4.2
Training Complete	Contractor must deliver on-site training on data, workflow and report configurations, as well as provide written documentation as described in 4.1.11	2-3 weeks from completed testing	Austin Energy written approval	4.1.11
Implementation Complete Final Go-live	Completion of Implementation as specified in the Functional and Technical Requirements.	After training is completed.	Austin Energy written approval	4.1 & Appendix A
90 day stabilization Complete	Three successful month-end close with exact reconciliation to external clients.	90 days after final go-live	Austin Energy written approval	4.1.16

8. Acceptance Criteria

1. **Milestone Acceptance.** Acceptance of each Milestone Deliverable is required using the following Deliverable Acceptance Procedure:

- i. When Contractor has completed a Milestone Deliverable as set forth in the Scope of Work (Section 0500), ("Completion"), Contractor shall notify City by requesting acceptance and sending the City's Project Manager one electronic copy via email of the completed Milestone Deliverable documents.
- ii. Within ten (10) business days of receipt (or as mutually agreed in writing) of the completed Milestone Deliverable, the City's Project Manager will either accept the Milestone Deliverable ("Acceptance"), reject it by providing the Contractor's Project Manager a written list of requested revisions referencing the applicable portions of the Contract, if any. If the Contractor's Project Manager fails to respond in moving forward with the requested corrections within five (5) business days, then the Deliverable Acceptance Procedure status will be escalated to the appropriate executive level of the Contractor, who shall endeavor to resolve the issue. The Contractor's Project

Manager will consider City's timely request for corrections if any, within the context of Contractors obligations, as stated in the Scope of Work (Section 0500) and the Contract.

iii. Should the City's Project Manager have not accepted the Milestone Deliverable, Contractor shall use commercially reasonable efforts to cure same, which cure shall not take longer than five (5) business days after the failed Acceptance, unless City approves in writing, additional time for said cure. Contractor shall make the agreed upon corrections and shall resubmit the Milestone Deliverable to the City's Project Manager. Those revisions not agreed to by Contractor will be managed in accord with the escalation process stated above. City shall then review as above and determine whether to accept or reject the Milestone Deliverable, such Acceptance not to be unreasonably withheld, delayed or conditioned. Upon written approval by the City, this Deliverable Acceptance Procedure may continue as an iterative process between the City and the Contractor until all issues have been resolved and the City has accepted the Milestone Deliverable.

2. Progress Payments for Milestone Completion. Progress payments associated with each Milestone Deliverable shall be established by identifiable milestones shown in Section 5 of the Contract. A specific payment shall not become due until the corresponding milestone and all previous milestones have been completed and Accepted to the satisfaction of City. The waiver for the convenience of City of any criterion or task required to complete a Milestone Deliverable (including early delivery of the Milestone Deliverable) shall not constitute justification for making the associated progress payment. No payments shall be made until City has accepted each Milestone, unless otherwise authorized in writing by the City's Contract Manager.

3. Acceptance of Additional Optional Services. In the event that the City engages Contractor for Additional Optional Services, Acceptance procedures will be specified in the applicable Contract Amendment.

4. Final Contract Completion Acceptance Procedure. The criteria for final acceptance of the Contract, including all Services are as follows.

- i. City has provided written Acceptance of all Services and Deliverables pursuant to the Deliverable Acceptance Procedure;
- ii. City has made payment of all payments under the Contract;
- iii. Contractor has delivered and City has received all final documentation reflecting all changes and corrections;
- iv. Contractor has returned and City has received all materials containing the City's Confidential Information or received from the City a written exception to this requirement;
- v. Contractor has destroyed or erased all electronic materials containing the City's Confidential Information, or received from the City a written exception to this requirement; and
- vi. Contractor has completed all closeout items specified in paragraph 15 of Section 0300, Final Payment and Closeout.

When the final acceptance criteria have been met, Contractor shall notify City in writing. Such notification constitutes Contractor's agreement that the Milestone Payment Schedule has been fulfilled and all payments under the Contract, payable to date have been made. Within ten (10) business days of receipt (or as mutually agreed in writing), City shall accept the Services ("Final Acceptance"), or reject them in writing. City shall not unreasonably withhold, condition, or delay Final Contract Completion Acceptance.

Should the City not accept the Services, Contractor shall use commercially reasonable efforts to cure same, which cure shall not take longer than five (5) business days after the failed Final Contract Completion Acceptance, unless City approves in writing additional time for said cure. Contractor shall make those City corrections requested which are agreed to by Contractor in writing, and Contractor will notify City in writing upon completion. City requested corrections not agreed to by Contractor will be managed in accordance with the escalation process stated in the paragraph above. City shall review as above and decide whether to accept or reject the Services. Upon written approval of the City, this Final Contract Completion Acceptance Procedure may continue as an interactive process between the City and the Contractor until all issues have been resolved, and the City has provided Final Contract Completion Acceptance of the Services.

9. **Appendices**

Appendix A: Functional Requirements & Technical Requirements & Business Process Flow Diagrams

**CITY OF AUSTIN
PURCHASING OFFICE
PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS
SOLICITATION NUMBER: RFP 1100 PAX3150REBID
ENERGY TRADING and RISK MANAGEMENT SYSTEM**

1. PROPOSAL FORMAT

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

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

Tab 1 – City of Austin Purchasing Documents - Submit the following:

PROPOSAL/ RESPONSE BOND: See document Section 0400 Supplemental Purchase Provisions, item 3 for specific requirement.

- a. Signed Offer Sheet
- b. Section 0601 Price Proposal Sheet
- c. Section 0605 Local Business Presence Identification Form
- d. Section 0800 Non-Discrimination and Non-Retaliation Certification
- e. Section 0801 Network Access
- f. Section 0835 Non-Resident Bidder Provisions Form
- g. Section 0840 Service-Disabled Veteran Business Enterprise
- h. Section 0900 Subcontracting/Sub-Consulting Utilization Form
- i. Section 0905 Subcontracting/Sub-Consulting Utilization Plan – (Complete and return if applicable)
- j. Signed Addendums

Tab 2 – Proposal Exceptions Form and Compliance Statement:

- a. Proposal Exceptions Form (Section 0630): Proposer shall clearly indicate each exception taken, provide alternative language, and justify the alternative language. The Proposer that is awarded the contract will be required to sign the contract with the provisions accepted; any exceptions may be negotiated or may result in the City deeming the offer non-responsive. Failure to accept or provide the exception information under **Purchasing Exceptions Form** may result in the City deeming the offer non-responsive. The City reserves the right to reject a Proposal containing exceptions, additions, qualifications, or conditions not called for in the Solicitation.
- b. Compliance: Submit a statement of your compliance with all applicable rules and regulations of Federal, State and Local governing entities. The Proposer shall state compliance with terms of this Request for Proposal (RFP). Additionally, the selected Vendor shall be compliant at all times with the requirements of the FBI's Criminal Justice Information System (CJIS) regarding system and network security and personnel backgrounds as applicable to this solicitation and subsequent awarded contract.

Tab 3– Authorized Negotiator: Include name, address, and telephone number of person in your organization authorized to negotiate Contract terms and render binding decisions on Contract matters.

Tab 4 – Experience, References and Qualifications:

- a. Executive Summary: Proposer shall provide an Executive Summary of three (3) pages or less in brief, concise terms, a summation of the proposal. Include the number of years your company has been in business, a summary of your company's history and experience, and how your organization will exceed the performance of other vendors in relation to the scope of work. Please also address how your

**CITY OF AUSTIN
PURCHASING OFFICE
PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS
SOLICITATION NUMBER: RFP 1100 PAX3150REBID
ENERGY TRADING and RISK MANAGEMENT SYSTEM**

organization will serve the City of Austin's needs relative to the needs of your other clients.

b. Experience:

- a. How many utility or energy customers do you have? Provide a list of customers specific to the utility or energy industry
- b. Highlight your solutions capability to accommodate renewable generation and renewable purchase power contracts. Describe implementation experience, as well as solution capability with ETRM systems which support functionality with renewable generation and renewable power purchase contracts. Include number of years your firm has been in the business of implementing the proposed ETRM systems?
- c. Describe relevant experience with Municipal utilities and/or for load serving entities and generating companies within the ERCOT Nodal market (do not include experience prior to 2010). Provide descriptions of similar implementations.
- d. Describe past "go-lives" that were completed successfully including any pertinent lessons learned and best practices.

c. Project Management Structure and Personnel: Include names and qualifications of all professional personnel who will be assigned to this project. State the primary work assigned to each person and the amount of time each person will devote to this work. Identify key persons by name and title. Provide all resumes. If use of subcontractors is proposed, identify their placement in the primary management structure.

- a. Provide a general explanation and organization chart which specifics project leadership and reporting responsibilities relating to the system implementation and support
- b. If the use of subcontractors is proposed, identify their placement in the primary management structure, and provide internal management description for each subcontractor.

d. References:

- a. At a minimum, provide four customer references for whom your firm has provided a turn-key fully functional system of a similar size and scope as described in this RFP. The City strongly prefers references of customers engaged in the ERCOT Nodal market.

All client reference information must be supported and verified. Reference contacts must be aware that they are being used and agreeable to City interview for follow-up. The City may solicit from previous clients, or any available sources, relevant information concerning Proposer's record of past performance.

At minimum, references should include the following information:

- Name of Agency
- Number of system users
- Contact name – contact most familiar with the implementation and performance of their system
- Contact telephone number and email
- Year project took place
- Budget of project
- Project Manager
- Scope and magnitude of project including detail of your systems/modules clients are using
- Was project completed on time and in budget?

**CITY OF AUSTIN
PURCHASING OFFICE
PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS
SOLICITATION NUMBER: RFP 1100 PAX3150REBID
ENERGY TRADING and RISK MANAGEMENT SYSTEM**

Tab 5 – Concept and Solution:

- a. System Design Description: Provide description and short summary of your proposed solution. Describe how the proposed solution meets the requirements detailed in Section 0500 Scope of Work, with detail in sections 4 and 5, as well as Appendix A. Provide supplement responses with links, documents, videos, or other materials deemed necessary to evaluate the proposal.

- b. Understanding of system requirements: Describe your understanding of how your system will meet and exceed the following:

Austin Energy seeks to avoid significant system customization in the ETRM system. If some customization is needed, Austin Energy will accomplish this in data entry and data extraction, as opposed to customization of code or tables. Additionally, the system must have both a production and test environment to allow for conducting “what if” analysis and testing strategies, without disruption to the production system. Please explain how your proposed solution and support agreement will meet these requirements.

- c. Longevity of the ETRM System: Describe the history of the proposed ETRM system. How long has it been in commercial operation and how has it developed over time?
- d. Development Plan: Provide a seven-year life cycle roadmap for the ETRM system. If you do not have this, provide the development plan that you do have available.
- e. Appendix A: Functional Requirements, Technical and Non-Functional Requirements: Complete and submit; for any requirements that require customization.

Proposal(s) containing the response of “DOES NOT MEET or MEETS PARTIAL” to any of the mandatory requirements (rated 99) listed on Appendix A: Functional Requirements, Technical and Non-Functional Requirements shall be deemed Non-Responsive and shall not be considered for award.

Use the Comments column to provide relevant details including but not limited to any requirements of Austin Energy to support the customization and pricing details. If customization is required, include the support and maintenance of the customization in your support and maintenance agreement.

- f. Service Level Agreement and Support/Ongoing Service:

Proposer shall submit their comprehensive Service Level Agreement (SLA) including, but not limited to, Uptime Guarantee, System Response Time, Incident Response, Security Remediation and Mitigation, and Service Availability with their response for review and evaluation by the City. Provide all details as required and any additional information you deem necessary to evaluate your proposal. Include the escalation path and single point of contact for issues after go-live.

- g. Implementation:

1. Provide an implementation plan that details steps and timeframes required to implement specific products and services. Specify proposed demarcation of responsibilities between the City and the Vendor. If applicable, provide a copy of support policies that will apply to this implementation.
2. Describe the specific On-Site implementation services that are offered, if any.
3. Describe any communication strategies and best practices that would be employed as part of the solution implementation.

**CITY OF AUSTIN
PURCHASING OFFICE
PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS
SOLICITATION NUMBER: RFP 1100 PAX3150REBID
ENERGY TRADING and RISK MANAGEMENT SYSTEM**

- h. Schedule: Provide an estimated schedule of work consistent with the requirements in this RFP (Section 0500, Scope of Work, item 7. Deliverables/Milestones). Describe the anticipated tasks, durations, milestones and resources required for each phase of the project schedule.

Note: Austin Energy expects to run the new ETRM system in parallel with the current ETRM system during a test phase, to confirm the new system runs appropriately and can provide the required functionality

2. PRICE PROPOSAL

Information described in the following subsections is required from each Proposer. Your method of pricing may or may not be used but should be described. A firm fixed price or not-to-exceed Contract is contemplated, with progress payments as mutually determined to be appropriate.

- a. **In a separate sealed envelope in the same RFP package submitted**, Proposer must complete and submit Section 0610 Price Proposal Sheet which will be used for price comparison purposes. If pricing is not submitted on Section 0610 Design Price Sheet, then the Offeror may be deemed nonresponsive.
- b. Travel expenses. All travel lodging expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC

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

- c. Proposal Preparation Costs: All costs directly or indirectly related to preparation of a response to the RFP or any oral presentation required to supplement and/or clarify a proposal which may be required by the City shall be the sole responsibility of the Proposer.

3. PROPOSAL VALIDITY PERIOD, COMPLIANCE, LOCAL BUSINESS PRESENCE

- a. Proposal Validity Period: All proposals are valid for a period of one hundred and eighty (180) calendar days subsequent to the RFP closing date unless a longer validity period is offered in the proposal.
- b. Local Business Presence: The City seeks opportunities for businesses in the Austin Corporate City Limits to participate on City contracts. A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years, currently employs residents of the City of Austin, Texas, and will use employees that reside in the City of Austin, Texas, to support this contract. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation. Points will be awarded through a combination of the Offeror's Local

**CITY OF AUSTIN
PURCHASING OFFICE
PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS
SOLICITATION NUMBER: RFP 1100 PAX3150REBID
ENERGY TRADING and RISK MANAGEMENT SYSTEM**

Business Presence and/or the Local Business Presence of their subcontractors. Evaluation of the Team's Percentage of Local Business Presence will be based on the dollar amount of work as reflected in the Offeror's MBE/WBE Compliance Plan or MBE/WBE Utilization Plan. Specify if and by which definition the Offeror or Subcontractor(s) have a local business presence.

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

4. EVALUATION FACTORS AND AWARD

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

- b. **Evaluation Factors:**

The table below indicates the scoring matrix and each of the proposals will be evaluated using this set of criteria.

Criteria	Description	% of Total
Concept and Solution including Appendix A, Functional, Technical, and Non-Functional Requirements	Tab 5 above	42
Experience, References, and Qualifications	Tab 4 above	30
Price	Attachment A Price Proposal Form	15
Local Presence of Business	Maximum points (see breakdown below)	10
Disabled Service Veterans	Maximum points	3
Sub total		100

Breakdown of Local Business Presence Table:

Local Business Presence	Points Awarded
Local business presence of 90% to 100% - a branch office in Austin present for the last 5 years (Home offices don't qualify)	10
Local business presence of 75% to 89%	8
Local business presence of 50% to 74%	6
Local business presence of 25% to 49%	4
Local presence of between 1 and 24%	2
No local presence	0

**CITY OF AUSTIN
PURCHASING OFFICE
PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS
SOLICITATION NUMBER: RFP 1100 PAX3150REBID
ENERGY TRADING and RISK MANAGEMENT SYSTEM**

c. Clarifications and Demonstrations - Optional

Clarifications and/or demonstrations session may be conducted at the discretion of the City. The City will score proposals based on the items listed above. The City may select a “short list” of Proposers based on those scores. Short listed Proposers may be invited for clarifications and/or demonstrations with the City. The City reserves the right to negotiate the actual contract scope of work and cost after submission and to rescore based on interviews.

Network Connection Agreement
Austin Energy Network and Systems Access
PART I

This Network Connection Agreement for Network and Systems Access ("Agreement") is entered into as of [ENTER MONTH, DAY, YEAR] (the "Effective Date"), by and between

AUSTIN ENERGY, the Electric Utility Department of the City of Austin ("Austin Energy")

and

[ENTER COMPANY NAME] ("Consultant" or "Company").

Part II of this Agreement sets forth the terms and conditions under which Austin Energy is willing to permit Consultant access to Austin Energy's corporate computer network (the "Network") and one or more Austin Energy information and computer systems (the "Systems").

Austin Energy has, at substantial cost, developed the Network and Systems to provide information services to itself and other City of Austin departments. The Network and Systems perform vital functions for these departments. The unwarranted or unauthorized access or use of the Network or Systems could put Austin Energy and these departments at significant risk of damage, including power plant power outages, interruption of electric utility service, interference with statewide power grids, danger to life and property, destruction of data, and the unwanted disclosure of sensitive or private information.

Consultant (and/or its subcontractors) has requested access to some or all of the Austin Energy Network and Systems, to facilitate the performance of its obligations to Austin Energy relative to the following project or contracted service:

[ENTER PROJECT OR SERVICE NAME]

For the purpose of clarification, the terms of this Agreement apply to the Consultant's access or Consultant's subcontractors' access to Austin Energy via Anywhere Outside Connect (AOC). "Consultant" includes Consultant's subcontractors wherever that term is used in this Agreement.

Austin Energy is willing to permit such access based on the level of risk to Austin Energy's physical and information assets and Consultant's assurance that it will abide by the terms and conditions as defined in Part II of this Agreement, as evidenced by its signature on the contract named above.



Network Connection Agreement

Austin Energy Network & Systems Access

PART II: Terms and Conditions

1. SCOPE OF ACCESS

Consultant shall use this access to the Network and Systems solely for the purpose of performing services associated with the project or contract at Austin Energy as specified in Part I of this Agreement. Consultant shall limit its access to the means and method approved by Austin Energy, as further described below in Section 6, *Specific Connections*.

Austin Energy may terminate or otherwise curtail Consultant's access to the Network or Systems at any time without notice to Consultant. However, Consultant will be relieved of any obligation to perform implementation or services as required by Austin Energy to the extent the termination was without cause, and access by Consultant was necessary to perform such obligation.

Consultant shall comply with the terms and conditions set forth in this Agreement, and with any security procedures, guidelines or alerts issued by Austin Energy from time to time. Austin Energy may, upon written notice to Consultant, require modification or supplementing of any of the terms and conditions contained in this Agreement, and Consultant agrees to abide by those terms.

2. DEFINITIONS

Computer system	The complete, working computer. Includes not only the computer, but also any software and peripheral devices that are necessary to make the computer function.
Information System	The business application that operates on a computer system. Includes the database, application programs, and machine procedures.
Network	The system that transmits any combination of voice, video and/or data between users. Includes all supporting hardware, such routers and switches, the cables connecting them, client and server machines, and network operating systems.
Consultant Executive	Consultant's executive who is authorized to and signs this legally binding agreement. This executive is expected to be the Company's President, a Vice President, Legal counsel, or equivalent role.
Consultant Delegated Agent	Consultant's point of contact to Austin Energy who administers the day-to-day operations of the project/program, such as Program Manager or Team Supervisor. Written notice is required for replacements (see Section 7, <i>Delegation of Authority</i> for requirements).



3. CONSENT TO MONITORING

Austin Energy may monitor and record any access to the Network and Systems at any time without notice to Consultant. Consultant consents to this monitoring and recording, and Consultant will ensure that all persons obtaining access to the Network and Systems through Consultant consent to this monitoring and recording.

4. CONSULTANT RESPONSIBILITIES

4.1 Consultant Personnel

Consultant shall limit access to the Network and Systems to those employees of Consultant ("Consultant Personnel") who need to have such access. Consultant shall provide a copy of this Agreement to all Consultant Personnel requiring remote access and shall require each person to review and sign the individual Consultant Remote Access Request form acknowledging such. Consultant agrees it shall be entirely responsible for the acts and omissions of any person to whom it authorizes access.

4.2 Login IDs and Security Tokens

4.2.1 Personal Token Login IDs

Austin Energy may elect to issue a personal Login ID and security token to authorized Consultant Personnel to be used during login. Consultant Personnel assigned a token are responsible to keep said token secure. Only the authorized individual is permitted to use his or her assigned Login ID and token passcode.

Austin Energy may request the return of the token at any time. A fee of \$100 will be paid by the Consultant if the token is not returned or, upon return, is not in working order.

4.2.2 Shared Token Login IDs

Austin Energy may assign a shared Login ID to a pool of Consultant Personnel who are authorized to access Austin Energy Systems for the purpose of intermittent technical support. A shared security token for the Consultant Personnel shall be issued to an authorized Austin Energy contact, who shall serve as the token custodian. Consultant must contact the Austin Energy token custodian in order to gain a passcode for single session access.

4.3 Consultant Systems

Consultant shall be responsible for all systems that Consultant uses to access the Network and Systems. Consultant shall ensure that its systems include up-to-date antiviral software reasonably acceptable to Austin Energy to prevent viruses from reaching the Network and Systems through Consultant's systems. Consultant shall take reasonable precautions to prevent unauthorized access to the Network and Systems through Consultant's systems.

Consultant assumes full responsibility for any systems it uses to access the Network or Systems, notwithstanding a specification or direction from Austin Energy. Consultant is expected to back up its own files, maintain firewalls, and take such other precautions as will minimize the impact of any malfunction or computer error on its own systems.



4.4 Notice of Breaches

Consultant shall IMMEDIATELY notify Austin Energy upon learning of any security breach by contacting the Austin Energy Technology Control Center at (512) 322-6077 and the Austin Energy contact person identified in the Agreement (by phone or e-mail). Consultant shall communicate the nature of its access and the nature of the security breach. In addition, Consultant shall, within 24 hours of the security breach, notify the Austin Energy contact person by written notice as described in Section 8, *Notices and Contacts*.

As used in this Section 4.4, the term "security breach" means any actual or threatened unauthorized access to the Network or the Systems, or to the details or specifications that would enable another individual to gain access, or to any information or data obtained during access. By way of examples, (1) knowledge that a specific Login ID has been published or otherwise made available to an unintended recipient constitutes a security breach, or (2) knowledge that an individual might have copied Austin Energy files, without the express permission of Austin Energy, or that an individual might have used access to the Network or Systems for any purpose other than that described in Section 1, *Scope of Access*, constitutes a security breach.

Consultant shall cooperate fully with Austin Energy to investigate any security breach and to take such steps as to minimize the impact thereof.

4.5 Third-Party Software

Access to the Network and Systems may involve access to software or other technology licensed by Austin Energy or other City departments from third parties. Consultant will use such software or technology for the sole purpose described in Section 1, *Scope of Access*, and shall comply with all restrictions applicable to that software and technology.

4.6 Transmission of Harmful Material

Consultant will not transmit nor permit the transmission of any unlawful, threatening, libelous, defamatory, obscene, scandalous, inflammatory, pornographic or profane material through the Network and Systems. Consultant acknowledges that Austin Energy intends to cooperate fully with law enforcement, regulatory, or judicial investigations of any access to the Network and Systems. This cooperation can include disclosure of the identity of, and the information transmitted or received by, persons accessing the Network and Systems.

4.7 Security Audits

In addition to, and without limiting, any rights contained in the Agreement, Austin Energy, at its sole expense, may conduct security audits of Consultant's access and of any Consultant systems that have access to the Network and Systems. These audits can include (1) an inspection of Consultant's systems and environment, (2) a review of Consultant's security procedures, and (3) an execution of security tests to verify system integrity. Consultant will immediately resolve any material issues identified through these audits.

4.8 Removal of Data

Consultant shall not retain copies of any data or information (including Third-Party Software) obtained from access to the Network and Systems, except as expressly permitted by Austin Energy in writing. Upon Austin Energy's request, Consultant shall promptly return such data and information to Austin Energy or destroy it as directed by Austin Energy, and so certify the same to Austin Energy in writing.



4.9 Confidentiality

All details, specifications, and other information regarding Consultant's access to the Network and Systems, including, but not limited to, all Login IDs and any information obtained as a result of access to, the Network and Systems, shall be deemed "Confidential Information" of Austin Energy.

Consultant agrees that it will not use, disclose, publish, or otherwise divulge to any third party either during or after the termination of this Agreement or permit its officers or employees to so divulge any Confidential Information of Austin Energy without prior written consent of Austin Energy. Consultant shall employ no less stringent procedures than the procedures used to protect its own confidential data. If disclosure to a third party, such as an auditor, is required, the third party is required to first sign a confidentiality agreement with the owner of the confidential information.

5. DISCLAIMER

ACCESS TO THE NETWORK, THE SYSTEMS AND ANY SOFTWARE OR EQUIPMENT PROVIDED THEREWITH IS PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. Nothing in these terms and conditions shall be construed as granting Consultant a right of access to the Network or Systems, a right to access the premises of Austin Energy, or a right to use any software or equipment provided therewith without express permission from Austin Energy.

6. SPECIFIC CONNECTIONS

6.1 Conditions for Client Connections

Consultant agrees that it or any of its associated affiliates, subsidiaries, or subcontractors is prohibited from directly accessing or connecting to the Network from any non-U.S.-based remote access or connection point, and agrees any such connection constitutes an immediate violation of this Agreement such that Austin Energy shall immediately sever any such access without liability or legal exposure of any sort.

Unless otherwise authorized by Austin Energy, all remote access for support or monitoring purposes shall go through Austin Energy's secure corporate remote access solution.

All access to the Network and Systems shall be strictly limited, both physically and technologically, to that which is necessary to perform the permitted tasks.

6.2 Conditions for Cyber Security Adherence

Consultant agrees to comply with Austin Energy Consultant/Vendor Acceptable Use Policy (attached as Appendix) and any other mutually agreed upon cyber security requirements defined in this Agreement or other contract.

Consultant is responsible for implementing antivirus software and updating virus signatures on a regular basis (at least monthly) and for implementing applicable system security software updates. Such updates shall be applied within a reasonable period after software release, availability or written notification, not to exceed 30 days. In the event of serious network security incident or breach deemed by Austin Energy Information Security, Consultant may be required to immediately apply updates or to disconnect from the Network at Austin Energy's request.



Consultant shall immediately notify Austin Energy, as described in Section 4.4, upon discovery of any security incident. Security incidents include but are not limited to, virus, network intrusion, or other event on Consultant's computer network that could affect the Network or system or data contained therein. During such incidents, Consultant shall immediately disconnect the computer network connection, either at the request of Austin Energy or as Consultant deems appropriate to protect the Network, the Systems, or data.

7. DELEGATION OF AUTHORITY

Consultant Executive shall delegate a Consultant Delegated Agent who shall be responsible for reviewing and approving individual Consultant Personnel requests for remote access as defined in this Agreement. All Consultant Personnel connections are subject to Austin Energy consent, and subject to continued compliance with this Agreement.

The Consultant Executive or Delegated Agent may designate a replacement by providing written notice to the Austin Energy contact named in this Section 8, *Notices and Contacts*.

8. NOTICES AND CONTACTS

Unless otherwise provided above, all notices and contacts regarding remote access to the Network or Systems shall be made to the following:

If to Austin Energy:

Austin Energy
721 Barton Springs Rd
Austin, Texas 78704
Attn: Michael Goin
E-mail: Michael.Goin@austinenergy.com
(512) 322-6076

If to Consultant:

Consultant Company name: _____
Company Address: _____
City, State Zip: _____
Attn (Consultant Delegated Agent): _____
E-mail: _____
Phone: _____

All written notices must be delivered by hand-delivery, nationally recognized overnight courier, or U.S. mail and sent in a manner that provides confirmation of receipt. Where immediate notice is specifically required, notices shall be communicated first by telephone and followed up by e-mails, and then by written notice.

Either party may change its contact by providing written notice to the other using the above contact information.



9. SURVIVAL; MISCELLANEOUS

This Agreement and its provisions shall survive the expiration or termination of the project implementation or contracted service for so long as necessary as to carry out the intent of this Agreement. No act or omission on the part of Austin Energy shall be construed as a waiver of the terms and conditions contained in this Agreement unless in writing signed by Austin Energy, and no waiver in any particular instance shall act as a waiver in any future instance unless so stated in the writing.



Appendix to Network Connection Agreement Austin Energy Consultant/Vendor Acceptable Use Policy

1 PURPOSE

The purpose of this policy is to establish guidelines and minimum requirements governing the acceptable use of Austin Energy (AE) information technology resources and remote access connections provided to vendors and consultants as part of a contract agreement.

This policy is in addition to any mutually agreed upon cyber security requirements as defined by contract or connection agreement.

2 USER RESPONSIBILITIES

- 2.1 Be accountable for all activity conducted under the user's login or e-mail account.
- 2.2 Take all reasonable precautions to prevent the unauthorized use of workstations and laptops by unauthorized individuals.
- 2.3 Lock the keyboard or use a password-enabled screen saver whenever you leave your workstation or laptop to protect your account from unauthorized access.
- 2.4 Ensure up-to-date virus protection is installed and activated on any information technology system that is connected to the AE information technology systems.
- 2.5 Communicate data security needs of information under your purview to your AE Customer Relationship Manager or Project Manager.
- 2.6 Save all AE business data to authorized AE drives or AE-approved disk storage.
- 2.7 Follow all security requirements as specified in the contract and/or connection agreement approved by AE and the authorized consultant/vendor company representatives.
- 2.8 Use information technology resources efficiently and productively.
- 2.9 Do not download and/or install non-authorized software on AE information technology resources.
- 2.10 Be courteous and follow accepted standards of etiquette for e-mail communication.

3 GENERAL STATEMENT OF THE POLICY

- 3.1 The use of AE Internet, e-mail and information technology systems must be related to, and for the benefit of City of Austin government and/or AE business.
- 3.2 All on-line communications, such as e-mail messages (and attachments) and postings to various on-line discussion groups and forums, are subject to the same laws, regulations, policies, and other requirements as information communicated in other written forms and formats. This includes proper business correspondence practices and other appropriate use policies for AE equipment and systems.
- 3.3 Network resources must be used responsibly to avoid creating a negative impact on others who share those same resources (see section *11 Resource Considerations*).



4 IMPLEMENTATION

4.1 Security

- 4.1.1 Because the Internet and its tools adhere to open and documented standards and specifications, it is inherently an unsecured network that has no built-in security controls.
 - 4.1.1.1 Avoid including confidential and sensitive information in e-mail and on-line communications unless proper, formalized security precautions have been established and are used (such as, encryption).
 - 4.1.1.2 Protect privileged or confidential information whenever intentional, inappropriate, or accidental disclosure of the information might expose AE or an individual to loss or harm.
- 4.1.2 Protect your password. Passwords must not be shared with anyone, including managers.
- 4.1.3 Authorized AE information technology staff reserve the right to access your password information and change it through legitimate means for business or security reasons.
- 4.1.4 Remote access connections shall be through Secure Shell (SSH) that provides encryption to protect the transferred information and authentication that the target remote system is correct. Telnet use for remote access is prohibited.

4.2 Privacy

Users acknowledge that they have no legitimate expectation of privacy when using AE resources as follows:

- 4.2.1 All electronic files and data developed under contract are the property of AE, regardless of their physical location or the form in which they are maintained. These files and data may be used, stored and disclosed at AE's discretion.
- 4.2.2 Internet usage, e-mail, or other forms of electronic messaging are not considered personal or private when using AE resources.
- 4.2.3 AE has the right to access and disclose all messages, attachments, and other electronic data sent or received over the AE electronic mail system or stored in its files.
- 4.2.4 Any e-mail and attachments sent from or received under an AE e-mail account can be public records and are subject to the mandatory public disclosure requirements of the Texas Open Information Act, unless excepted by the Act.
- 4.2.5 AE ITT staff routinely monitors every connection to the Internet (including e-mail, Websites, and instant messaging) to ensure compliance with this policy.

4.3 Acceptable Use

Acceptable uses of computer resources are those that conform to the purpose, goals, and mission of AE, to each user's job duties and responsibilities according to contracted services between AE and the consultant or vendor. The following list, although not all-inclusive, provides some examples of acceptable uses:



- 4.3.1 Accessing computer systems and resources to perform work required to fulfill contractual obligations
- 4.3.2 Communications and information exchanges directly relating to the mission, charter, and work tasks of AE including e-mail in direct support of work-related functions or collaborative projects.
- 4.3.3 Communications with vendors of products used or being considered for use by AE, either to investigate use of their product or to receive help in using their product.
- 4.3.4 Research and information gathering in support of AE.

4.4 Unacceptable Use

Unacceptable use can be defined as activities that do not conform to the purpose, goals, and mission of AE and to each user's job duties and responsibilities as contracted between AE and the consultant or vendor. Any questionable computer usage should be avoided. When in doubt, seek clarification with AE management prior to pursuing the activity.

AE computers, e-mail, and/or Internet or remote access connections cannot be used to perform any of the following activities:

- 4.4.1 Seek or gain unauthorized access to AE or City of Austin network resources or Internet or intranet resources. Provide a means of unauthorized access to any AE or City of Austin resources.
- 4.4.2 Destroy the integrity of computer-based information.
- 4.4.3 Compromise the privacy and/or security of users.
- 4.4.4 Disrupt the functions of AE and/or City of Austin networks or other computer resources, including, but not limited to, propagation of worms or viruses or other debilitating programs.
- 4.4.5 Circumvent legal copyrights or trademarks or participate in their infringement.
- 4.4.6 Conduct or promote commercial or private/personal business enterprises or products.
- 4.4.7 Support or solicit on behalf of groups, organizations, or such that are not related to AE or City of Austin or engage in political lobbying.
- 4.4.8 Transmit unsolicited commercial information (such as junk mail or advertising). Issue or propagate unsolicited e-mail or bulk e-mail.
- 4.4.9 Listen to, view, or download audio or video files for entertainment or leisure activities unless authorized by the appropriate AE project manager or supervisor.
- 4.4.10 Transmit material that may be deemed offensive to its recipient. View, transmit, or receive sexually explicit material. Advocate racial, ethnic, religious, or gender-based slurs.
- 4.4.11 Threaten or harass others. Contribute to the harming of minors.
- 4.4.12 Conduct or participate in illegal or fraudulent activity. Commit forgery or impersonation.



4.5 Remote Access

- 4.5.1 Remote access is a privilege, not a right. Any violation in its use can result in access being terminated.
- 4.5.2 Do not share connection information, such as passwords, phone numbers, encryption keys or software, with anyone.
- 4.5.3 Follow all Terms and Conditions of the Network Connection Agreement approved by AE and the authorized consultant/vendor company representatives.

4.6 Wireless Network/Access

- 4.6.1 Wireless connections to the AE network are expressly prohibited unless sanctioned by AE Information Technology Infrastructure Management.
- 4.6.2 Wireless home networks are not allowed to be connected to AE's network.

4.7 Resource Considerations

The following policies relate to activities that can negatively affect network performance and resources:

- 4.7.1 Only approved staff within AE are permitted to broadcast messages to all AE employees at once. Contact the AE Technology Control Center if such notifications are needed.
- 4.7.2 Delete unnecessary messages and attachments on AE e-mail accounts, according to AE record retention requirements. Contact the AE Records Coordinator for the appropriate workgroup for more information.
- 4.7.3 Whenever possible, avoid sending e-mails with 100kb or larger document attachments. For internal correspondence, when possible, place the document in a shared location and link it in the e-mail. For external correspondence, it is preferable to use FTP to transfer large files.
- 4.7.4 Limit downloading large files to a time after normal business hours at both local time and the time at the remote site. Users must be knowledgeable about the network and desktop resource requirements for the transfer.
- 4.7.5 Only subscribe to very active mailing lists, discussion groups or news groups if absolutely necessary to support a job duty or assignment. A high volume of messages can impact your time, network resources, and file storage requirements.
- 4.7.6 Avoid downloading music or videos to AE's resources for entertainment purposes. These programs can have virus, copyright and bandwidth issues.

