



Solicitation **COVER SHEET**

IDENTIFICATION

Number	RFQS 7400 JTH4000REBID
Title	MUNICIPAL BOND UNDERWRITING
Summary	Qualified underwriters and investment banks issuing municipal securities for the City of Austin, Texas.
Type	Request for Qualifications Statement (RFQS)
Version (Addenda)	2 (Addendum 4)

AUTHORIZED CONTACT PERSONS

Primary	Jim Howard, Procurement Specialist IV; (512) 974-9382; jim.howard@austintexas.gov
Secondary	Leyla Mammadova, Procurement Specialist IV; (512) 978-1519; leyla.mammadova@austintexas.gov
Subcontractor Questions	Small Minority Business Resources Department; (512) 974-7600; SMBRComplianceDocuments@austintexas.gov
Notes	See Solicitation Instructions, 3.1 Authorized Contact Persons.

IMPORTANT DATES

OFFERS DUE

Date and Time	Thursday, July 29, 2020 2:00 PM (CDT)
Notes	See Solicitation Instructions, 5 Offer Submission.

OFFER OPENING

Date and Time	Thursday, July 29, 2020 3:00 PM (CDT)
Notes	See Solicitation Instructions, 5 Offer Submission.

QUESTIONS DUE

Date and Time	Friday, July 9, 2020 3:00 PM (CDT)
Submission Method	Email Only
Notes	See Solicitation Instructions, 3.2 Questions.

PRE-OFFER CONFERENCE

Conference (Yes/No)	Yes
Mandatory (Yes/No)	No
Date and Time	June 29, 2020 2:00 -3:00 PM
Location	<p>Microsoft Teams meeting</p> <p>Join on your computer or mobile app</p> <p>Click here to join the meeting</p> <p>Or call in (audio only)</p> <p>+1 512-831-7858,,389352540# United States, Austin</p> <p>Phone Conference ID: 389 352 540#</p> <p>Find a local number Reset PIN</p> <p>Learn More Meeting options</p>
Notes	N/A

PUBLISHED

Date	Monday, June 14, 2021
Available Online	https://www.austintexas.gov/financeonline/account_services/solicitation/solicitations.cfm
Available Hardcopy	Purchasing Office; 124 w. 8 th Street, Suite 300; Austin, TX 78701

SOLICITATION DOCUMENTS

Document name	Pages	Date
<u>Solicitation Packet – RFQS 7400 JTH4000REBID Includes the following:</u>		
<u>Solicitation Cover Sheet</u>	2	
<u>Solicitation Instructions</u>	11	
<u>Terms and Conditions</u>	24	
<u>Scope of Work</u>	3	
<u>Offer and Certifications – RFQS 7400 JTH4000REBID – Complete, sign and return</u>	13	

NIGP CODES

COMMODITY CODES

Code	Description
94625	BANKING SERVICES. MUNICIPAL UNDERWRITING



Solicitation INSTRUCTIONS

Solicitation No.
RFQS 7400JTH
4000REBID
(Version 2
Addendum 4)

1 REQUEST FOR QUALIFICATION STATEMENTS

- 1.1 Invitation.** The City of Austin invites all Responsible Offerors to submit Offers to provide the services described in this Solicitation.
- 1.2 Documents.** This Request for Qualifications Statements ("RFQS" or "Solicitation") is composed of all documents listed in the Attachments section of the Solicitation Cover Sheet.
- 1.3 Changes.** The City may change or revise any of the contents of this Solicitation through the issuance of a written Addendum. Any Addenda issued will be added to the Attachments section of the Solicitation Cover Sheet. The Version number displayed in the Solicitation Cover Sheet will indicate the number of Addenda issued. Any explanation, clarification, interpretation or change to the Solicitation made in any other manner is not binding upon the City, and Offerors shall not rely upon such explanation, clarification, interpretation or change. Oral explanations or instructions given before the award of the Contract are not binding.
- 1.4 Review of Documents.** Offerors shall review the entire Solicitation, as revised. Offerors shall notify the Authorized Contact Person(s) listed on the Solicitation Cover Sheet in writing of any omissions, ambiguities, inconsistencies or errors in the Solicitation prior to the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet. Offerors shall also notify the City of any Solicitation contents the Offeror believes may be unreasonably restrictive.
- 1.5 Cancellation.** The City reserves the right to cancel this Solicitation at any time for any reason and to resolicit the goods and services included in this Solicitation.

2 PUBLICATION AND NOTICES

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

3 COMMUNICATIONS AND MEETINGS

- 3.1 Authorized Contact Persons.** The names and contact information for the authorized contact persons for this Solicitation are displayed in the Solicitation Cover Sheet. Offerors needing assistance contacting an Authorized Contact Person regarding this Solicitation may also contact the Purchasing Office's main line at (512) 974-2500 and request assistance from any member of the Purchasing Office's management team. Offerors may direct specific questions concerning subcontractors and responding to the Minority-owned Business Enterprise and Women-owned Business Enterprise Procurement Program requirements to the SMBR contact, also listed on the Solicitation Cover Sheet.
- 3.2 Questions.** Offerors shall submit any questions concerning this Solicitation in writing via e-mail to the Authorized Contact Persons displayed on the Solicitation Cover Sheet. The City will respond to all questions received by the Questions Due Date and Time displayed on the Solicitation Cover Sheet. The City will publish one or more

Addenda displaying all timely received questions and the City's responses to each for any information not already contained in the solicitation.

- 3.3 Vendor Help Desk.** For general questions concerning the City's online financial services system, Austin Finance Online, Vendor Connection ("Vendor Connection"), Offerors may contact the Vendor Help Desk at (512) 974-2018. Assistance from the Vendor Help Desk is limited to navigating and using Vendor Connection only. The Vendor Help Desk will not respond to any questions concerning a specific Solicitation.
- 3.4 No-Lobbying.** This Solicitation is subject to City Code, Ch. 2-7, Article 6, Anti-Lobbying and Procurement. (https://assets.austintexas.gov/purchase/downloads/New_ALO_Ordinance_No_20180614-056.pdf) The No-Lobbying period for this Solicitation starts on the Published Date displayed on the Solicitation Cover Page. The No-Lobbying Period continues through the earliest of the following: (i) the Solicitation is cancelled, (ii) the last of any resulting contract(s) are executed, or (iii) 60-days following Council authorization of the last contract resulting from this Solicitation. The No-Lobbying Period continues throughout the completion of the solicitation process. During the No-Lobbying Period, Offerors, Respondents and/or their Agents shall not make any prohibited communications to City Officials or City employees other than the Authorized Contact Persons. Respondents includes both prospective and actual Offerors.
- 3.5 Pre-Offer Conferences.** The City may hold one or more pre-offer conferences to review the Solicitation and to receive verbal questions. The Solicitation Cover Sheet will display if a Pre-Offer Conference is being held and if attendance at this meeting is mandatory. If a Pre-Offer Conference is planned, the date, location, time and any other necessary information regarding this meeting will also be displayed in the Solicitation Cover Sheet. Attendance at any Pre-Offer Conference will be recorded and will be included in an Addendum published following the meeting. As the Solicitation is subject to changes (See Solicitation Instruction, 1.3 Changes.) Offerors shall not rely on verbal exchanges that may occur at a Pre-Offer Conference. Offerors shall continue to submit all questions in writing (See Solicitation Instructions, 3.2 Questions.)
- 3.6 Site Visits.** The City may hold one or more site visits to allow prospective Offerors to inspect the location(s) where work under any resulting contract will be performed and to receive verbal questions. The Solicitation Cover Sheet will display if a Site Visit is being held and if attendance at this meeting is mandatory. If a Site Visit is planned, the date, location, time and any other necessary information regarding this meeting will also be displayed in the Solicitation Cover Sheet. Attendance at any Site Visit will be recorded and will be included in an Addendum published following the meeting. As the Solicitation is subject to changes (See Solicitation Instruction, 1.3 Changes.) Offerors shall not rely on verbal exchanges that may occur at a Pre-Offer Conference. Offerors shall continue to submit all questions in writing (See Solicitation Instructions, 3.2 Questions.)

4 OFFER PREPARATION

- 4.1 Offer Submittals.** Offerors intending to respond to this Solicitation shall download and complete each of the Submittal documents listed in the Solicitation Cover Sheet. Submittal documents will include additional Solicitation instructions specific to its contents. Offerors will complete each Submittal in accordance with the instructions in the submittal. At a minimum, submittals will include a Technical Offer, and an Offer and Certifications submittal.
- 4.2 Exceptions.** Offerors shall indicate if they take exception to any portions of the Solicitation in their Offer. Any exceptions included may negatively impact the City's evaluation of the Offer or may cause the City to reject the Offer entirely.
- 4.3 Offer Acceptance Period.** All Offers are valid for a period of two hundred and forty (240) calendar days subsequent to the RFQS closing date.
- 4.4 Proprietary and Confidential Information.** All Offers received and opened by the City are subject to the Texas Government Code, Ch. 552, and will be made available to the public. Offerors seeking to keep any portions of their Offer confidential shall mark each such portion as "Proprietary". The City will, to the extent allowed by law,

endeavor to protect such information from disclosure. The City may request a review and determination from the Attorney General's Office of the State of Texas, of any Offer contents marked as "Proprietary". A copyright notice or symbol is insufficient to identify proprietary or confidential information.

- 4.5 Cost of Offer Preparation and Participation.** Offerors are responsible for all costs related to the preparation of their Offer and incurred while participating in this Solicitation process.
- 4.6 Minority and Women Owned Business Enterprise (MBE/WBE) Procurement Program.** If the solicitation includes an MBE/WBE Program Compliance Plan or Offeror intends to subcontract, the Offeror shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Subcontractor Utilization Plan as approved by the City (the "Plan").

5 OFFER SUBMISSION

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

- 5.1 Electronic Offers.** Electronic Offers (electronic documents) shall be submitted to the City of Austin using the Solicitation's eResponse function, available through the City's online financial system, Austin Finance Online. To submit Electronic Offers using the eResponse function, Offeror's must first be registered as a vendor with the City of Austin in Austin Finance Online.

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

- 5.1.1 Due Date and Time for Electronic Offers.** Electronic Offers in response to this Solicitation shall be submitted via eResponse by the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet. The system time within Austin Finance Online shall be the official time of record for Electronic Offers.
- 5.1.2 Withdrawing Electronic Offers.** Electronic Offers submitted online in response to this Solicitation may be withdrawn, revised and resubmitted using the eResponse function any time prior to the Solicitation's Due Date and Time. Withdrawn Electronic Offers may be resubmitted, with or without modifications, up to the Solicitation's Due Date and Time.
- 5.1.3 Late Electronic Offers.** The Solicitation's eResponse function in Austin Finance Online will not allow Electronic Offers to be submitted past the Solicitation's Due Date and Time.
- 5.1.4 Opening Electronic Offers.** The information regarding Electronic Offers will become available on or shortly after the Offer Opening Date and Time stated on the Solicitation's Cover Sheet. When Electronic Offers are opened, the names of each Offeror would be displayed within the Solicitation's eResponse section. For Solicitations conducted via Competitive Sealed Bidding, the Price Offer for each Offeror will also be displayed in the eResponse section.

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

Deliveries by US Mail	Deliveries by Courier Services (e.g., Fedex, UPS, etc.) and In-Person Deliveries
City of Austin Purchasing Office Response to Solicitation: RFQS7400 JTH4000REBID P.O. Box 1088 Austin, Texas 78767-8845	City of Austin, Municipal Building Purchasing Office Response to Solicitation: RFQS7400 JTH4000REBID 124 W 8 th Street, Rm 310 Austin, Texas 78701 Reception Phone: (512) 974-2500

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5.2.1 Due Date and Time for Hardcopy Offers. Hardcopy Offers in response to this Solicitation shall be received by the City via one of the aforementioned delivery methods by the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet. The time stamp clock at the Purchasing Office reception desk shall be the official time of record for Hardcopy Offers.

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

5.2.3 Late Hardcopy Offers. All Hardcopy Offers received after the Solicitation's Due Date and Time will be rejected. Late Hardcopy Offers that are inadvertently received by the City shall be returned to the Offeror. It is the responsibility of the Offeror to ensure that their Offer arrives at the proper location by the Solicitation's Due Date and Time. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Hardcopy Offer arriving on time. The City may, at its sole discretion, receive a late Hardcopy Offer if the City's misdirection or mishandling was the sole or main cause for the Hardcopy Offer's late receipt at the designated location.

5.2.4 Opening Hardcopy Offers. The City will open Hardcopy Offers on or shortly after the Offer Opening Date and Time stated on the Solicitation's Cover Sheet. When Hardcopy Offers are opened, the names of each Offeror would be read aloud. For Solicitations conducted via Competitive Sealed Bidding, the Price Offer for each Offeror will be available to read aloud. If no one is in attendance at the Solicitation Opening, the aggregate price will be read aloud, with the remaining Price Offer available for public inspection immediately following the Solicitation opening.

5.3 Special procedures due to 2020 COVID-19 Pandemic.

5.3.1 Confirmation of Submittals – Due to the current Pandemic circumstances, the City is not able to provide written confirmation of Hardcopy Offers when they are received or able to verify receipt of Hardcopy Offers or provide signature confirmation of Offers delivered by common carriers.

5.3.2 Withdrawing Hardcopy Offers – Hardcopy Offers may be withdrawn in writing or by email at any time prior to the Solicitations Due Date and Time. Offerors must send emails to withdraw Offers to the following email address: PurchasingAdmin@austintexas.gov

5.3.3 Solicitation Openings - Due to the current Pandemic circumstances, the City is not facilitating public attendees at Solicitation openings. Instead, the City will conduct this Solicitation opening via live webcast at the following website: https://www.austintexas.gov/financeonline/afo_content.cfm?s=66.

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

6 OFFER EVALUATION

6.1 Minimum Responsiveness. Offers are Minimally Responsive when they include all of the Submittals listed in this Solicitation, completed and with sufficient detail in each to evaluate the Offer in accordance with Solicitation's Instructions and any further instructions within each Submittal. Offers that are not Minimally Responsive may be rejected.

6.2 Clarifications. Any time after the opening of Offers, the City may contact Offerors to ask questions about their Offers contents in order to better understand these contents as-written. Responses to clarification questions, whether done verbally or submitted in writing, do not change the Offer's contents.

6.3 Evaluation. Offers that are Minimally Responsive will be evaluated based on the Evaluation Factors listed in Section 11.1 of the Solicitation Instructions. Offers that are Minimally Responsive will be evaluated based on

Evaluation Factors listed in the Submittals section of the Solicitation. Evaluation Factors correspond to their specified Submittals and shall indicate their respective weighting next to each. Submittals not identified as Evaluation Factors will be evaluated on a pass / fail basis in accordance with the Solicitation's Instructions and any further instructions within each Submittal. The City's evaluation may be made without Clarifications or Discussions with Offerors.

- 6.4 Contract Development.** After evaluations are complete, the City will contact the highest evaluated Offeror and request a work plan for completing the Scope. The City will negotiate with this Offeror until a successful contract is negotiated and approved by both parties. If a contract can not be agreed to, the City will then request a work plan for completing the scope of work including pricing from the second highest evaluated Offeror. The City will then negotiate with this Offeror until a successful contract is negotiated and approved by both parties. If a contract cannot be agreed upon by this Offer the City will then proceed with the next highest Offeror, repeating this process with each sequential Offeror until a contract can be agreed to by both parties.
- 6.5 Interviews/Presentations.** The City may require that one or more Offeror submitting the highest rated Offers participate in interviews and/or presentations.

7 CONTRACT AWARD AND EXECUTION

- 7.1 Award Determination.** City staff will recommend Contract award to the Offeror(s) submitting the highest rated Offer(s) based on the Evaluation Factors set forth in this Solicitation which the City is able to successfully negotiate a contract with. The Award Determination will be published to Austin Finance Online and notice will be sent to all Offerors subscribed to the Solicitation.
- 7.2 Multiple Awards.** If the City determines that multiple contracts are needed, the City will award one or more additional contracts to the Offeror(s) submitting the next highest rated Offer(s).
- 7.3 Contract Execution.** Contracts within the City Manager's authority will be awarded and executed simultaneously. Contracts above the City Manager's authority will be executed following their authorization by the Austin City Council.

8 ADMINISTRATIVE MATTERS

- 8.1 Solicitation File.** All documents included in this Solicitation, and all timely received Offers in response to this Solicitation, except for Offer contents deemed by Offerors to be proprietary and confidential, will be available for public inspections upon the execution of the contract.
- 8.2 Debriefings.** Offerors may request a debriefing meeting to ask any questions concerning the Solicitation's contents, process or the evaluation of their Offer. Debriefing meetings are informal exchanges and may be requested anytime following the earlier of (i) after the contract resulting from this Solicitation is executed, or in the case of multiple awards, the last contract is executed; (ii) the date the Solicitation is cancelled. Debriefings are not public called meetings in accordance with the Texas Open Meetings Act and are usually limited to a single Offeror and any of their representatives. Only information regarding the Solicitation documents and the Offeror's Offer (including City's evaluation of the Offer) in response to the Solicitation will be discussed.
- 8.3 Reservations.** The City expressly reserves the right to the following: (i) specify approximate quantities in the Solicitation; (ii) extend the Solicitation closing date and time; (iii) add additional terms or modify existing terms in the Solicitation; (iv) reject an Offer containing exceptions, additions, qualifications or conditions not called for in the Solicitation; (v) reject an Offer received from an Offeror who is currently debarred or suspended by the City, State, or Federal Government; (vi) reject an Offer that contains fraudulent information; (vii) reject an Offer that has material omissions; (viii) reject or cancel any or all Offers; (ix) reissue a Solicitation; (x) procure any item by other means; (xi) consider and accept alternate Offers, if specified in the Solicitation, when most advantageous to the City; (xii) reject an Offer if prices in the Offer are unbalanced (significantly less than cost for some items

and significantly more than cost for others) and/or (xiii) waive any minor informality in any Offer or procedure so long as the deviation does not affect the competitiveness of an Offer or the process.

8.4 Protests. The Purchasing Officer has the authority to settle or resolve any claim of an alleged deficiency or protest. The procedures for notifying the City of Austin of an alleged deficiency or filing a protest are listed below. If you fail to comply with any of these requirements, the Purchasing Officer may dismiss your complaint or protest.

8.4.1 Protest regarding the Solicitation (Pre-Submittal Protest). Any protest regarding the Solicitation by the City shall be filed no later than five (5) days prior to the due date and time for Offers. Any protest filed after that date which raises issues regarding the Solicitation will not be considered.

8.4.2 Protests regarding the evaluation of Offers. Any protest regarding the evaluation of Offers by the City shall be filed with the City no later than five (5) days after the notification of award recommendation is posted on Austin Finance Online, or notification that the protestor's status as a Offeror has changed, such as notification that an Offer has been found to be non-responsive or an Offeror has been found to be non-responsible. Any protest filed after such date which raises issues regarding the evaluation will not be considered. Offerors may only protest the evaluation of their Offer.

8.4.3 Protest Regarding Award of Contract (Post-Award Protest). Any protest regarding the award of the contract shall be filed no later than ten (10) days after the date of award. Any protest regarding the award of the contract filed after such date will not be considered.

8.4.4 You shall submit your protest in writing and it shall include the following information: (i) your name, address, telephone, and email address; (ii) the Solicitation number; (iii) the specific facts and/or law upon which the protest of the Solicitation or the award is based, including all pertinent documents and evidence thereto; and (iv) the form of relief requested.

8.4.5 Your protest shall be concise and presented logically and factually to help with the City's review.

8.4.6 When the City receives a timely written protest, the Purchasing Officer will determine whether the grounds for your protest are sufficient. If the Purchasing Officer decides that the grounds are sufficient, the Purchasing Office will schedule a protest hearing, usually within five (5) working days. If the Purchasing Officer determines that your grounds are insufficient, the City will notify you of that decision in writing.

8.4.7 The protest hearing is informal and is not subject to the Open Meetings Act. The purpose of the hearing is to give you a chance to present your case, it is not an adversarial proceeding. Those who may attend from the City are: representatives from the department that requested the purchase, the Department of Law, the Purchasing Office, and other appropriate City staff. You may bring a representative or anyone else that will present information to support the factual grounds for your protest with you to the hearing.

8.4.8 A decision will usually be made within fifteen (15) calendar days after the hearing.

8.4.9 The City will send you a copy of the hearing decision after the appropriate City staff has reviewed the decision.

8.4.10 When a protest is filed, the City usually will not make an award until a decision on the protest is made. However, the City will not delay an award if the City Manager or the Purchasing Officer determines that the City urgently requires the supplies or Services to be purchased, or failure to make an award promptly will unduly delay delivery or performance. In those instances, the City will notify you and make every effort to resolve your protest before the award.

8.5 Interested Parties Disclosure. As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the successful

Offeror. The Offeror is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

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

9 DEFINITIONS

Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

“Addendum” means a written instrument issued by the Contract Awarding Authority that modifies or clarifies the Solicitation prior to the Due Date. “Addenda” is the plural form of the word.

“Best Offer” means the best evaluated Offer in response to a Request for Qualifications Statements.

“Best Offeror” means the Offeror submitting the Best Offer.

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

“Offer” means a complete signed response to a Solicitation including, but not limited to, a Request for Qualification Statements.

“Offeror” means a person, firm, or entity that submits an Offer in response to this Solicitation. Any Offeror may be represented by an agent after submitting evidence demonstrating the agent’s authority. The agent cannot certify as to his own agency status.

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

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

“Request for Qualification Statements” means all documents utilized for soliciting Qualifications Statements.

“Responsible Offeror” means the financial and practical ability of the Offeror to perform the Contract and takes into consideration resources, expertise, and past performance of the Offeror as well as compliance with all City ordinances concerning the purchasing process.

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

“Solicitation” means this Request for Qualification Statements or RFQS.

10. OFFER SUBMITTALS

10.1 Proposal Format. The required font for all text in the response, strictly within the Proposal, is Times New Roman 12 point. The Proposal itself shall be organized in the following format and informational sequence and shall not exceed eleven (11) pages, excluding the Audit Report, and other required Forms and appendices. The following is the page layout the proposal shall follow:

Page(s) 1 – 2: Section 10.2 Business Organization and Section 10.3 Authorized Negotiator

Page(s) 3 – 4: Section 10.4 Background and Prior Experience

Page(s) 5 – 6: Section 10.5 Personnel

Page(s) 7 – 8: Section 10.6 Innovative Financing Techniques/City Assessment

Page(s) 9 – 10: Section 10.7 Financial Viability

Page 11: Section 10.8 References

In no event shall a response exceed the page allotment notated in the proposal layout notated above. Should a response to a specific section only warrant one page, leave the following page blank and adhere to the outline reflected above.

- 10.2 Business Organization:** State full name and address of your organization and identify parent company if you are a subsidiary. Specify the branch office or other subordinate element which will perform, or assist in performing, work herein. Indicate whether you operate as a partnership, corporation, or individual. Include the State in which incorporated or licensed to operate. This section should include at a minimum the following:
- 10.2.1 Management/Ownership:** Provide any recent or proposed changes in the firm's management or ownership.
 - 10.2.2** Confirm that the firm shall complete the City's non-discrimination certificate and submit it with their response.
 - 10.2.3** Confirm an understanding that the firm's officers, employees, or agents will not attempt to lobby or influence a vote or recommendation related to the firm's proposal response; directly or indirectly, through any contact with City Council Members or other City officials between the proposal submission date and award by the City Council.
 - 10.2.4** Number of Investment Bankers employed selling municipal bonds in the United States.
 - 10.2.5** Texas offices and locations, if any, along with the number Investment Bankers selling municipal bonds in each Texas office identified.
 - 10.2.6** Please answer the following questions, and, if the response is affirmative, provide details and an explanation in an appendix:
 - 10.2.6.1** Within the past 24 months, has your firm and/or any of its employees been the subject of any investigation related to the municipal industry by the SEC, FINRA, or any other State or Federal organization that oversees, regulates, licenses, or is otherwise responsible for the municipal industry?
 - 10.2.6.2** Within the past 24 months, has your firm and/or any of its employees been involved in any litigation, arbitration, disciplinary, or other actions arising from the firm's underwriting, management, derivatives, or municipal securities activities?
 - 10.2.6.3** Will the selection of the firm result in any current or potential conflict of interest? Should any potential or existing conflict be known by the firm, the proposal shall specify the party with which the conflict exists or might arise, the nature of the conflict and whether the firm would step aside or resign from the engagement or representation creating the conflict.
 - 10.3 Authorized Negotiator:** Include name, address, and telephone number of the person in your organization authorized to negotiate Contract terms and render binding decisions on Contract matters.
 - 10.4 Background and Prior Experience:** Describe only relevant corporate experience and individual experience for personnel who will be actively engaged in a transaction. Do not include corporate experience unless personnel assigned to this engagement actively participated. Do not include experience prior to 2015. This section should include at a minimum the following:
 - 10.4.1** Briefly describe the history and structure of your firm.
 - 10.4.2** Provide the location of the firm's headquarters and municipal trading desk(s).
 - 10.4.3** Describe your firm's involvement in the primary market for Municipal bonds. In an appendix, please include a list of competitively sold issues within Texas for which your firm placed/won a bid within the past 24 months.
 - 10.4.4** Describe your firm's involvement in the secondary market for the City's bonds, including data on volume of trading.
 - 10.4.5** In an appendix, please supply title and year the transaction was completed along with the reference name, title, present address, and phone number of the principal person for which the prior transaction projects were accomplished within the past 24 months.

10.4.6 Describe your firm's Marketing, Distribution and Related Capabilities:

10.4.6.1 Description of the firm's ability to distribute the City's securities within the Central Texas Area, the State of Texas, and the nation.

10.4.6.2 Indication of the firm's marketing approach and distribution plan for the City's securities, including targeted investors and/or investor classes.

10.4.6.3 Indication of the type of investor relations program the firm would recommend maximizing demand for the City's securities.

10.5 Personnel: Include names, titles, and qualifications of key professional personnel who will be assigned to cover the City. This section should include the following:

10.5.1 State the primary work assigned to each person and the estimated percentage of time each person will devote to this work:

10.5.1.1 Provide resumes for each in an appendix.

10.5.2 Experience of proposed staff with municipal debt programs.

10.5.3 Disclosure of whether any proposed staff have ever been removed or asked to resign from a financing.

10.6 Innovative Financing Techniques/City Assessment

10.6.1 Provide one innovative financing technique, suggestion or idea which would be relevant, or of interest to, the City. This can also include derivatives, debt restructuring, and self-liquidity ideas. This section should include the following:

10.6.1.1 If the idea was used in an actual transaction, indicate the individuals referenced in Section 10.5 above who were involved in the transaction.

10.6.1.2 Provide the name, title, organization, address and telephone number of the issuer.

10.6.2 Provide an assessment for one of the City's major credit profiles detailing how your firm recommends mitigating the challenges below:

10.6.2.1 Marketing challenges for the respective City credit profile that was chosen

10.6.2.2 Managing the existing debt portfolio for the respective City credit profile that was chosen

10.7 Financial Viability: Provide the most recent annual Audit Report and most recent interim financial report as an attachment or appendix item. Hard copies must be included in the original submittal.

10.7.1 Provide the current equity capital positions (total equity capital, net equity capital and excess net equity capital) in accordance with GAAP, or corresponding equity information if a bank. Do not refer to the annual audit as a response to this question.

10.7.2 Provide two examples of how your firm committed capital on behalf of a municipal client in the past year. Detail your firm's willingness to commit capital for City of Austin transactions.

10.7.2.1 Is there a limit on the size of an offering that your firm can underwrite for any of the City's open credits? If so, please include the amount, the specific credit, and reason's surrounding the limit.

10.7.3 Over the last twelve months, please list all transactions in which the firm served as either a Co-Manager or Senior Manager and did not meet the liability in terms of orders in an appendix.

10.8 References: Provide exactly three (3) government client references, at least two of which are covered by individuals listed in Section 10.5 above. For each reference, provide a name, title, and organization, address and telephone number. In addition to the list provided, the City may independently solicit other references.

10.9 Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying:

10.9.1 On November 10, 2011, the Austin City Council adopted Ordinance No. 20111110-052 amending 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). During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the Authorized Contact Person in the Solicitation as the contact for questions and comments regarding the Solicitation.

- 10.9.2** If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
- 10.9.3** If a Respondent has been disqualified under this article more than two times in a sixty (60) month period, the Purchasing Officer shall debar the Offeror from doing business with the City for a period not to exceed three (3) years, provided the Respondent is given written notice and a hearing in advance of the debarment.
- 10.9.4** The City requires Offerors submitting Offers on this Solicitation to provide a signed, Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit certifying that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance. This document is found with the document titled Offers and Certifications.
- 10.10 Proposal Acceptance Period:** All proposals are valid for a period of two hundred and forty (240) calendar days subsequent to the RFQS closing date unless a longer acceptance period is offered in the proposal.

11 Evaluation of Offers

11.1 Evaluation Factors

RFP Evaluation Factors	Maximum Points
Business Organization: Refer to Section 10.2 above.	20
Background and Prior Experience: Refer to Section 10.4 above.	20
Personnel Qualifications: Refer to Section 10.5 above.	20
Innovation: Refer to Section 10.6 above.	15
Financial Viability: Refer to Section 10.7 above.	15
References: Refer to Section 10.8 above.	10
Total	100

- 11.2 Interviews and/or presentations, Optional.** The City will score Offers on the basis of the criteria listed above. The City may select a "short list" of Offerors based on those scores. "Short-listed" Offerors may be invited for interviews or presentations with the City. The City reserves the right to re-score "short-listed" Offers as a result, and to make award recommendations on that basis.

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

1. GENERAL

1.1 TERM OF CONTRACT:

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

1.2 INDEFINITE QUANTITY:

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

1.3 INVOICES:

- A. The Contractor shall submit separate Invoices for each Order after each delivery or on the schedule provided in the Contract. If partial shipments or deliveries are authorized by the City, a separate Invoice must be sent for each shipment or delivery made.
- B. Invoices shall be sent to the address on the Purchase Order or Delivery Order in the section entitled, "BILL TO". Proper Invoices must include a unique Invoice number, the purchase Order or delivery Order number, the master agreement number (if applicable), the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized according to pricing structure in the Contract. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the Invoice. The Contractor's name and, if applicable, the tax identification number on the Invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's Invoice. Invoices received without all required information cannot be processed and will be returned to the vendor.
- C. Invoices for labor shall include a tabulation of work-hours at the appropriate rates and grouped by work Order number. Time billed for labor shall be limited to hours actually worked.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontracting and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the Invoiced amount. The City will furnish a tax exemption certificate upon request.

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1.4 PAYMENT:

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

1.5 FINAL PAYMENT AND CLOSE OUT:

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

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Manager or Contract Manager no later than the 15th calendar day after completion of all work under the Contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

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

1.6 SPECIAL TOOLS & TEST EQUIPMENT:

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

1.7 AUDITS AND RECORDS:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract, at the City's expense. The Contractor agrees to refund to the City any overpayments disclosed by any such audit. The City agrees to protect from disclosure Contractor's confidential and proprietary information disclosed during an audit to the same extent it protects its own confidential and proprietary information, subject to the requirements of the Texas Public Information Act, Chapter 2251, Texas Government Code.
- B. Records Retention:
- i. Contractor is subject to City Code Chapter 2-11 (Records Management), and as it may subsequently be amended.
 - ii. The Contractor shall retain all records for a period of three years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.

1.8 FINANCIAL DISCLOSURES AND ASSURANCE:

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

1.9 RIGHT TO ASSURANCE:

Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. If no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

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1.10 STOP WORK NOTICE:

The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

1.11 DEFAULT:

The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or Deliverable required to be submitted by the Contractor to the City. The City shall be in default if it fails to make payment in accordance with the Payment terms of this Contract.

1.12 TERMINATION FOR CAUSE:

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

1.13 ATTORNEY'S FEES:

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

1.14 TERMINATION WITHOUT CAUSE:

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

1.15 FRAUD:

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

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1.16 DELAYS:

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

1.17 FORCE MAJEURE:

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

1.18 INDEMNITY:

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

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

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

1.19 NOTICES:

Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Notices to the Contractor shall be sent to the address registered with the City. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the assigned Procurement Specialist.

1.20 CONFIDENTIALITY:

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

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to be disclosed by law or an Order of a court or other governmental authority (including a Texas Attorney General opinion) with proper jurisdiction. In all cases, the Contractor agrees to promptly notify the City before disclosing Confidential Information to permit the City reasonable time to seek an appropriate protective Order. The Contractor agrees to use protective measures no less stringent than the Contractor uses in its business to protect its own most valuable information. In all circumstances, the Contractor's protective measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

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

1.21 TEXAS PUBLIC INFORMATION ACT:

- A. All material submitted by the Contractor to the City related to the Contract shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
- B. In accordance with Texas Government Code §552.372, if this Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a fiscal year, Contractor agrees to:
 - i. Preserve all Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract;

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

1.22 PUBLICATIONS:

All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

1.23 ADVERTISING:

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

1.24 NO CONTINGENT FEES:

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

1.25 GRATUITIES:

The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were Offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

1.26 PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any Solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that Solicitation. Any willful violation of this Section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject 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.

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1.27 INDEPENDENT CONTRACTOR:

The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent Contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

1.28 ASSIGNMENT DELEGATION:

The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this Paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third-party beneficiaries to the Contract.

1.29 WAIVER:

The claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

1.30 MODIFICATIONS:

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

1.31 INTERPRETATION:

The Contract is intended by the parties as a final, complete and exclusive Statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

1.32 DISPUTE RESOLUTION:

A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this Section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 14 calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a

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written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to consider qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a Contract interpretation expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

1.33 JURISDICTION AND VENUE:

The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another State or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

1.34 INVALIDITY:

The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

1.35 HOLIDAYS:

The following holidays are observed by the City:

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

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President's Day	Third Monday in February
Memorial Day	Last Monday in May
Juneteenth	June 19
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

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

1.36 SURVIVABILITY OF OBLIGATIONS:

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

1.37 COOPERATIVE CONTRACT:

- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, for the purpose of accessing their cooperative contracts and making available our cooperative contracts, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions of this cooperative contract to other eligible governmental agencies that have entered into an interlocal agreement with the City for the purpose of accessing the City's cooperative contracts.
- B. The City does not accept any responsibility or liability for the purchases by other governmental entities made under a separate contract based on this cooperative contract.

1.38 NON-DEBARMENT CERTIFICATION:

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

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1.39 EQUAL OPPORTUNITY:

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

1.40 MANDATORY ANTI-ISRAEL BOYCOTT PROVISION:

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

Pursuant to Texas Government Code §2271.002, the City is prohibited from contracting with any "company" for goods or services unless the following verification is included in this Contract.

- A. For the purposes of this Section only, the terms "company" and "boycott Israel" have the meaning assigned by Texas Government Code §2271.001.
- B. If the Contractor qualifies as a "company", then the Contractor verifies that he:
 - i. does not "boycott Israel"; and
 - ii. will not "boycott Israel" during the term of this Contract.
- C. The Contractor's obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2271 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.

1.41 PROHIBITION ON LGBTQ+ CONVERSION THERAPY:

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

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1.42 INSURANCE:

A GENERAL INSURANCE REQUIREMENTS:

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages and endorsements required in Section B., Specific Insurance Requirements, to the City prior to Contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- ii. All endorsements naming the City as additional insured, waivers, and notices of cancellation shall indicate, and the Certificate of Insurance shall be mailed to the following address:
City of Austin Purchasing Office
P.O. Box 1088
Austin, Texas 78767
OR
PUInsuranceCompliance@austinTexas.gov
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all Subcontractors prior to the Subcontractors commencing work on the project.
- v. The Contractor's and all Subcontractors' insurance coverage shall be written by companies authorized to do business in the State of Texas and have an A.M. Best rating of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section B., Specific Insurance Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in exposure, statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

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- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions greater than \$499,999 shall be disclosed on the Certificate of Insurance.
 - xii. If any required insurance is written on a claims-made basis, the Certificate of Insurance shall state that the coverage is claims-made and the retroactive date shall be prior to or coincident with the date of the Contract and the coverage continuous and shall be provided for 24 months following the completion of the Contract.
 - xiii. The insurance coverages specified in Section B., Specific Insurance Requirements, are required minimums and are not intended to limit the responsibility or liability of the Contractor.
- B. **Specific Insurance Coverage Requirements:** The Contractor, consistent with its status as an independent Contractor shall carry and will cause its Subcontractors to carry, at a minimum insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - a. Waiver of Subrogation, Form WC420304, or equivalent coverage;
 - b. 30 Days' Notice of Cancellation, Form WC420601, or equivalent coverage.
 - ii. **Commercial General Liability Insurance:** Coverage with minimum bodily injury and property damage per occurrence limits of \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
 - (1) The policy shall contain the following provisions:
 - a. Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project;
 - b. Independent Contractors coverage (Contractor/Subcontracted work);
 - c. Products/Completed Operations Liability for the duration of the warranty period;
 - d. If the project involves digging or drilling, provide Explosion, Collapse, and Underground (X, C, & U) Coverage.
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - a. Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage;
 - b. 30 Day's Notice of Cancellation, Endorsement CG 0205, or equivalent coverage;
 - c. The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.
 - iii. **Business Automobile Liability Insurance:** Coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - a. Waiver of Subrogation, Endorsement CA0444, or equivalent coverage;
 - b. 30 Days' Notice of Cancellation, Endorsement CA0244, or equivalent coverage;
 - c. The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

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- iv. **Professional Liability:** Contractor shall provide Professional Liability coverage, at a minimum limit of \$1,000,000 per occurrence, 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.

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

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

2. SERVICES

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

If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables or Services, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables or Services. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables or Services. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor within 30 calendar days of notification provided by the City.

2.2 WORKFORCE:

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

2.3 GUARANTEE – SERVICES:

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

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- 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 the services warranty standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within 30 calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this Section.
- C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

2.4 DATA SECURITY:

In the course of providing services to the City, the Contractor may gain access to City-owned and City-maintained information. If so, the City and the Contractor desire to keep such information appropriately protected. The Contractor will handle information it receives from the City in compliance with this provision.

- A. Definitions. Capitalized terms used in this Section shall have the meanings set forth, below:

"Authorized Persons" means (i) the Contractor's employees; and (ii) the Contractor's Subcontractors and agents who have a need to know or otherwise access Personal Information to enable the Contractor to perform its obligations under this Contract, and who are bound in writing by confidentiality and other obligations sufficient to protect Personal Information in accordance with the terms and conditions of this Contract.

"Highly Sensitive Personal Information" means an (i) individual's government-issued identification number (including Social Security number, driver's license number, or state-issued identification number); (ii) financial account number, credit card number, debit card number, or credit report information, with or without any required security code, access code, personal identification number, or password that would permit access to an individual's financial account; or (iii) biometric, genetic, health, medical, or medical insurance data.

"Personal Information" means information provided to the Contractor by or at the direction of the City, information which is created or obtained by the Contractor on behalf of the City, or information to which access was provided to the Contractor by or at the direction of the City, in the course of the Contractor's performance under this Contract that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, email addresses, and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, user identification and account access credentials or passwords, financial account numbers, credit report information, student information, biometric, health, genetic, medical, or medical insurance data, answers to security questions, and other personal identifiers), in case of both subclauses (i) and (ii), including, without limitation, all Highly Sensitive Personal Information.

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“Security Breach” means (i) any act or omission that compromises either the security, confidentiality, or integrity of Personal Information or the physical, technical, administrative, or organizational safeguards put in place by the Contractor or any Authorized Persons, or by the City should the Contractor have access to the City’s systems, that relate to the protection of the security, confidentiality, or integrity of Personal Information, or (ii) receipt of a complaint in relation to the privacy and data security practices of the Contractor or any Authorized Persons or a breach or alleged breach of this Contract relating to such privacy and data security practices.

Without limiting the foregoing, a compromise shall include any unauthorized access to or disclosure or acquisition of Personal Information.

B. Standard of Care

- i. The Contractor acknowledges and agrees that, during the term of this Contract, the Contractor may create, receive, or have access to Personal Information. For any Personal Information, the Contractor shall comply with this Section in its creation, collection, receipt, transmission, storage, disposal, use, and disclosure of such Personal Information and be responsible for any unauthorized creation, collection, receipt, transmission, access, storage, disposal, use, or disclosure of Personal Information under its control or in its possession by all Authorized Persons. The Contractor shall be responsible for, and remain liable to, the City for the actions and omissions of all Authorized Persons concerning the treatment of Personal Information.
- ii. Personal Information is deemed to be Confidential Information of the City and is not Confidential Information of the Contractor. In the event of a conflict or inconsistency between this Section and any other Section of this Contract, the terms and conditions of this Section shall govern and control.
- iii. The Contractor agrees and covenants that it shall:
- iv. Keep and maintain all Personal Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use, or disclosure;
 - a. Not create, collect, receive, access, or use Personal Information in violation of law;
 - b. Use and disclose Personal Information solely and exclusively for the purposes for which the Personal Information, or access to it, is provided pursuant to the terms and conditions of this Contract, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available Personal Information for the Contractor’s own purposes or for the benefit of anyone other than the City, in each case, without the City’s prior written consent; and
 - c. Not directly or indirectly, disclose Personal Information to any person other than Authorized Persons, without the City’s prior written consent.
- v. The Contractor represents and warrants that its creation, collection, receipt, access, use, storage, disposal, and disclosure of Personal Information does and shall comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations and directives.
- vi. The Contractor shall implement and maintain a written information security program, including appropriate policies, procedures, and risk assessments that are reviewed and updated at least annually.
- vii. Without limiting the Contractor’s obligations under this Section, the Contractor shall implement administrative, physical, and technical safeguards to protect Personal Information from unauthorized access, acquisition, or disclosure, destruction, alteration, accidental loss, misuse, or damage that are no less rigorous than the National Institute of Standards and Technology (“NIST”) Cybersecurity Framework and shall ensure that all such safeguards, including the manner in which Personal Information is created, collected, accessed, received, used, stored, processed, disposed

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of, and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Contract.

- viii. If the Contractor has access to or will collect, access, use, store, process, dispose of, or disclose credit, debit, or other payment cardholder information, the Contractor shall, at all times, remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at the Contractor's sole cost and expense.
- ix. At a minimum, the Contractor's safeguards for the protection of Personal Information shall include: (i) limiting access of Personal Information to Authorized Persons; (ii) securing business facilities, data centers, paper files, servers, backup systems, and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (iii) implementing network, application, database, and platform security; (iv) securing information transmission, storage, and disposal; (v) implementing authentication and access controls within media, applications, operating systems, and equipment; (vi) encrypting Highly Sensitive Personal Information stored on any media; (vii) encrypting Highly Sensitive Personal Information transmitted over public or wireless networks; (viii) strictly segregating Personal Information from information of the Contractor or its other customers so that Personal Information is not commingled with any other types of information; (ix) conducting risk assessments, penetration testing, and vulnerability scans and promptly implementing, at the Contractor's sole cost and expense, a corrective action plan to correct any issues that are reported as a result of the testing; (x) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (xi) providing appropriate privacy and information security training to Authorized Persons.
- x. The Contractor shall, at all times, cause Authorized Persons to abide strictly by the Contractor's obligations under this Contract. The Contractor further agrees that it shall maintain a disciplinary/sanctions process to address any unauthorized access, use, or disclosure of Personal Information by any Authorized Person. Upon the City's written request, the Contractor shall promptly identify for the City, in writing, all Authorized Employees as of the date of such request. Upon the City's written request, the Contractor shall provide the City with a network diagram that outlines the Contractor's information technology network infrastructure and all equipment used in relation to fulfilling its obligations under this Contract, including, without limitation: (i) connectivity to the City and all third parties who may access the Contractor's network to the extent the network contains Personal Information; (ii) all network connections, including remote access services and wireless connectivity; (iii) all access control measures (for example, firewalls, packet filters, intrusion detection and prevention services, and access-list-controlled routers); (iv) all backup or redundant servers; and (v) permitted access through each network connection.

C. Security Breach Procedures:

- i. The Contractor shall:
 - a. Provide the City with the name and contact information for an employee of the Contractor who shall serve as the City's primary security contact and shall be available to assist the City 24 hours per day, seven days per week as a contact in resolving obligations associated with a Security Breach;

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- b. Notify the City of a Security Breach as soon as practicable, but no later than 24 hours after the Contractor becomes aware of it; and
 - c. Notify the City of any Security Breaches by telephone at (512)974-4357 (HELP).
- ii. Immediately following the Contractor's notification to the City of a Security Breach, the parties shall coordinate with each other to investigate the Security Breach. The Contractor agrees to fully cooperate with the City in the City's handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) providing the City with physical access to the facilities and operations affected; (iii) facilitating interviews with the Contractor's employees, Authorized Persons, and others involved in the matter; and (iv) making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law, regulation, industry standards, or as otherwise required by the City.
- iii. The Contractor shall, at its own expense, use best efforts to immediately contain and remedy any Security Breach and prevent any further Security Breach, including, but not limited to taking any and all action necessary to comply with applicable privacy rights, laws, regulations, and standards. The Contractor shall reimburse the City for all actual costs incurred by the City in responding to, and mitigating damages caused by, any Security Breach, including all costs of notice and/or remediation.
- iv. The Contractor agrees that it shall not inform any third party of any Security Breach without first obtaining the City's prior written consent, other than to inform a complainant that the matter has been forwarded to the City's Attorney. Further, the Contractor agrees that the City shall have the sole right to determine: (i) whether notice of the Security Breach is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies, or others as required by law or regulation, or otherwise in the City's discretion; and (ii) the contents of such notice, whether any type of remediation may be Offered to affected persons, and the nature and extent of any such remediation.
- v. The Contractor agrees to maintain and preserve all documents, records, and other data related to any Security Breach.
- vi. The Contractor agrees to fully cooperate, at its own expense, with the City in any litigation, investigation, or other action deemed necessary by the City to protect its rights relating to the use, disclosure, protection, and maintenance of Personal Information.
- vii. In the event of any Security Breach, the Contractor shall promptly use its best efforts to prevent a recurrence of any such Security Breach.

D. Oversight of Security Compliance

Upon the City's written request to confirm the Contractor's compliance with this Contract, as well as any applicable laws, regulations, and industry standards, the Contractor grants the City or, upon the City's election, a third party on the City's behalf, permission to perform an assessment, audit, examination, or review of all controls in the Contractor's physical and/or technical environment in relation to all Personal Information being handled and/or services being provided to the City under this Contract. The Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure, and application software that processes, stores, or transports Personal Information for the City pursuant to this Contract.

In addition, upon the City's written request, the Contractor shall provide the City with the results of any audit performed by or on behalf of the Contractor that assesses the effectiveness of the Contractor's

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information security program as relevant to the security and confidentiality of Personal Information shared during the course of this Contract.

- i. **Return or Destruction of Personal Information.** At any time during the term of this Contract, at the City's written request or upon the termination or expiration of this Contract for any reason, the Contractor shall, and shall instruct all Authorized Persons to, promptly return to the City all copies, whether in written, electronic, or other form or media, of Personal Information in its possession or the possession of such Authorized Persons, or securely dispose of all such copies, and certify in writing to the City that such Personal Information has been returned to the City or disposed of securely. The Contractor shall comply with all directions provided by the City with respect to the return or disposal of Personal Information.
- ii. **Equitable Relief.** The Contractor acknowledges that any breach of its covenants or obligations set forth in this Section may cause the City irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the City is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from any court, in addition to any other remedy to which the City may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, notwithstanding to any exclusions or limitations in this Contract to the contrary.
- iii. **Material Breach.** The Contractor's failure to comply with any of the provisions of this Section is a material breach of this Contract. In such event, the City may terminate the Contract effective immediately upon written notice to the Contractor without further liability or obligation to the Contractor.
- iv. **INDEMNIFICATION.** THE CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND ITS ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, SUCCESSORS, AND ASSIGNS (EACH, A "CITY INDEMNITEE") FROM AND AGAINST ALL LOSSES, DAMAGES, LIABILITIES, DEFICIENCIES, ACTIONS, JUDGMENTS, INTEREST, AWARDS, PENALTIES, FINES, COSTS, OR EXPENSES OF WHATEVER KIND, INCLUDING REASONABLE ATTORNEYS' FEES, THE COST OF ENFORCING ANY RIGHT TO INDEMNIFICATION HEREUNDER, AND THE COST OF PURSUING ANY INSURANCE PROVIDERS, ARISING OUT OF OR RESULTING FROM ANY THIRD-PARTY CLAIM AGAINST ANY CUSTOMER INDEMNITEE ARISING OUT OF OR RESULTING FROM SERVICE PROVIDER'S OR AUTHORIZED PERSON'S FAILURE TO COMPLY WITH ANY OF THE OBLIGATIONS OF THIS SECTION.

CITY OF AUSTIN
PURCHASING OFFICE
SCOPE OF WORK
MUNICIPAL UNDERWRITING
REQUEST FOR QUALIFICATIONS STATEMENTS
SOLICITATION NO.: RFQS 7400 JTH4000REBID

Description: Qualified underwriters and investment banks demonstrating successful experience in the issuance of municipal securities for the City of Austin, Texas.

1.0 **Purpose**

The City of Austin ("City") Treasury Office is seeking municipal underwriting and investment banking services to assist the City in marketing future refunding, new money and other financing transactions.

2.0 **Background**

The City Treasury Office is a division within the Financial Service Department. The Treasury Office is responsible for issuing and managing the City's debt obligations. The main mission of the City's debt management program is to provide and manage low-cost debt financing of large-scale, long-term capital projects and improvements while balancing market and credit risk with appropriate benefits, mitigations and controls.

Currently, PFM Financial Advisors, LLC. ("PFM") (Dennis Waley in Austin) serves as financial advisor to the City. The City's Municipal Advisor Representation Letter can be found here: https://assets.austintexas.gov/financeonline/finance/downloads/DOC20100510_50_38.pdf. PFM and the City's Treasury Office assumes responsibility for obtaining bond ratings, preparing the offering documents, performing quantitative analysis and structuring future bond issues. Selected underwriters will complete this process by issuing municipal securities. The City seeks statements of qualifications from qualified underwriters and investment banks demonstrating successful experience.

The City intends to contract with no more than sixteen (16) firms in total, the contractor pool, which will be separated into the following three categories:

1. National – firms that are primary dealers with the Federal Reserve Bank of New York as of the publication date of this RFQS.
2. Regional – firms with a national presence who typically focus on firms with a national presence who are considered a middle market firm. A middle market firm is a firm that has annual revenues not exceeding \$3 Billion or that has employees not exceeding 3,000.
3. Other – firms who are minority or women owned, or Texas headquartered, or firms who do not necessarily meet the national or regional descriptions above due to their market focus.

Respondents are required to identify the category for which they would like to be considered. The City will have the ability to move a respondent into a different category, should it be determined the respondent mis-identified their category. All responses will be evaluated along with other Respondents in the same category based upon the evaluation criteria detailed in Instructions, Section 10 Proposal Submittals and Section 11 Evaluation of Offers.

The selected firms must be in compliance with applicable City ordinances and satisfactorily complete all related forms and certificates as described in this solicitation.

The Contract will encompass underwriting services for the following City credits:

1. General Obligation Credit
2. Water & Wastewater System Revenue Credit

3. Electric Utility System Revenue Credit
4. Airport System Revenue Credit
5. Hotel Occupancy Tax Revenue Credit

*Note, the City has the authority to add/delete credits at its discretion.

Please note that joint responses will not be considered

3.0 **Term of Contract**

The contract shall commence on May 31, 2022 and shall remain in effect for a term of 60 months or when the City terminates the contract, whichever is sooner.

4.0 **Scope of Work**

4.1 **Contractor's Responsibilities and Acceptance of Work**

The responsibilities of the Contractor will include, but not be limited to the following:

4.1.1 Evaluate and assist in refining financial plans and objectives regarding the sale of bonds; assist in the identification of financing/structuring alternatives' and recommend adjustments where appropriate. Assist with the preparation of preliminary and final official statements as applicable to fully comply with all disclosure rules and requirements.

4.1.2 Assist City staff, its financial advisor and bond counsel in evaluation and preparation of the bond indenture and other agreements as required by the financing. Also, assist in the presentations for rating agencies, bond insurers, or as otherwise needed to secure optimum market advantage.

4.1.3 Analyze and make recommendations relating to various financing options so as to secure the lowest practical interest rate; enhance the marketability of the bonds; achieve the widest competition for bond purchase to include retail, institutional, and other investor classes; and achieve optimal leverage of City resources, while maintain a prudent level of risk. Identify the advantages and disadvantages of any recommendations.

4.1.4 Management of co-managing underwriters to include maintenance of records of the account, negotiation of sale of bonds, preliminary and final pricing, taking orders and other services associated with book-running senior managing underwriters.

4.1.5 Coordinate the final allotment of bonds with the City. The City is committed to the equitable treatment of all members of its underwriting team.

4.1.6 Preparation by the senior manager of pricing information prior to sale of bonds to include spread components, estimated price scale for the City's bonds, current and expected market conditions, details of recent sales, proposed bond allocations (subject to approval by City) to co-managing underwriters and distribution of underwriting fees.

4.1.7 Identify potential investors and create and implement successful marketing and sales strategies for the City's securities.

4.1.8 Underwrite and/or inventory unsold balances at prevailing market prices/yields then existing.

4.1.9 Preparation by the senior manager of a "Post-Sale Analysis" report that includes the following:

4.1.9.1 a debt schedule for the issue that includes principal and interest requirements, as well as the true interest cost;

4.1.9.2 a comparison of orders and allotments by year and by firm;

4.1.9.3 a comparison of the coupon rates and reoffering yields with issues of similar term and credit quality marketed at or about the same time;

4.1.9.4 a written discussion of any circumstances relating to the market or the City's offering that may have impacted the sale results.

4.1.10 Coordinate closing arrangements with the City staff, bond counsel, financial advisor, trustee bank, and other appropriate officials.

5.0 Specific Invoice Requirements

The City's preference is to have invoices emailed to Debt@austintexas.gov.

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

6.0 Designation of Key Personnel

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

	Name/ Title	Phone Number	Email Address
City Contract Manager	Bryan Rivera	512) 974-7891	Bryan.rivera@austintexas.gov
City Contract Administrator, Procurement Specialist	Jim Howard Procurement Specialist IV	512-974-2031	Jim.howard@austintexas.gov
Contractor's Key Personnel	To Be Determined		

7.0 Deliverables/Milestones

Contractors will be assigned transactions on modified rotational basis. Typically, the assignments will include a team ("Team") of multiple firms made up of the contractor pool. While the City will make every effort to assign transactions in an equitable manner, other factors including those listed below may ultimately determine the Team membership.

1. Formal presentation of financing ideas by firms.
2. Complexity and size of transaction (which could result in more or fewer firms being assigned).
3. Type of industry or sector specific expertise required.
4. Previous performance on city transactions.

Detailed assignment records will be maintained throughout the contract period to aid in the assignment process to ensure transactions are distributed fairly across the contractor pool.