

**CITY OF ROUND ROCK****PURCHASING DEFINITIONS, STANDARD TERMS AND CONDITIONS****DEFINITIONS**

The following definitions shall be used to identify terms throughout specification documents:

1. **AGREEMENT**: A mutually binding legal document obligating the Vendor to furnish the goods, equipment or services specified within the solicitation and obligating the City to compensate in accordance with the conditions of the agreement.
2. **BID/PROPOSAL/RESPONSE**: A document submitted by a respondent in response to a solicitation to be used as the basis for negotiations or for entering into an agreement.
3. **BIDDER/PROPOSER/RESPONDENT**: The party identified throughout the solicitation document that considers themselves qualified to provide the goods, equipment or services specified and submits a response to the solicitation.
4. **CITY**: Identifies the City of Round Rock, located in Travis and Williamson Counties, Texas.
5. **GOODS**: Represent materials, supplies, commodities and equipment.
6. **IFB**: Invitation for Bid – A document used to solicit competitive or multi-step sealed bids.
7. **PIGGYBACK AGREEMENT**: A term used to identify a contract or agreement that has been competitively bid in accordance with State of Texas statutes, rules, policies and procedures and have been extended for the use of state and local agencies and active CO-OP entities.
8. **PO**: Purchase Order – A written document by the City to a vendor formalizing all the terms and conditions of a proposed transaction, to include but not be limited to, a description of the requested item, delivery schedule, terms of payment, transportation, delivery location, price, quantity, and special instructions.
9. **RFI**: Request for Information – A non-binding method whereby a jurisdiction publishes via newspaper, internet, or direct mail its need for input from interested parties for an upcoming solicitation. A procurement practice used to obtain comments, feedback or reactions from potential suppliers (contractors) prior to the issuing of a solicitation. Generally price or cost is not required. Feedback may include best practices, industry standards, technology issues.
10. **RFP**: Request for Proposal – The document used to solicit proposals from potential providers for goods and services (Respondents). Price is usually not a primary evaluation factor. Provides for the negotiation of all terms, including price prior to agreement award. May include a provision for the negotiation of Best and Final Offers. May be a single step or multi-step process.
11. **RFQu**: Request for Qualification – A document which is issued by a procurement entity to obtain statements of the qualifications of potential development teams or individuals (i.e. consultants) to gauge potential competition in the marketplace, prior to issuing the solicitation.
12. **RFQ**: Request for Quotation – A small order amount purchasing method. A request is sent to suppliers along with a description of the commodity or services needed and the supplier is asked to respond with price and other information by a pre-determined date.
13. **SERVICES**: Work performed to meet the requirements and demand of said purchase order or agreement. The furnishing of labor, time, or effort by the Vendor and their ability to comply with promised delivery dates, specification and technical assistance specified.
14. **SUBCONTRACTOR**: Any person or business entity employed to perform part of a contractual obligation under the control of the principal contractor for fulfillment of a purchase order or agreement with the City. Any supplier, distributor, vendor, or firm that furnishes supplies or services to a prime contractor or another subcontractor to fulfill their obligations with the City.
15. **VENDOR**: Person or business enterprise providing goods, equipment, labor and/or services to the City as fulfillment of obligations arising from an agreement or purchase order.

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By submitting a response to the Solicitation or accepting a PO, the Vendor agrees that these terms and conditions shall govern unless specifically provided otherwise on the face of the purchase order or in a separate agreement.

1. **ABANDONMENT OR DEFAULT:** A Vendor who abandons or defaults on work which causes the City to purchase goods or services elsewhere may be charged the difference in cost of goods, services or handling, if any, and may not be considered in the re-advertisement of the goods or services and may not be considered in future solicitations for the same type of work unless the scope of work is significantly changed.
2. **ABSENCES OF PURCHASE ORDER OR AGREEMENT:** The Vendor's delivery of goods or services without an approved PO or agreement may result in rejection of delivery, return of goods at the Vendor's expense and also in non-payment for goods and services.
3. **ACCEPTANCE:** Acceptance inspection should not take more than five working days. The vendor will be notified within this time frame if the service provided is not in full compliance with the project scope. If any service is canceled for non-acceptance, the needed equipment or service may be purchased elsewhere and the vendor may be charged full increase, if any, in cost and handling.
4. **ACCEPTANCE OF TERMS & CONDITIONS:** A PO is the City's commitment to purchase the goods and/or services described from the Vendor. The City's placement of this order is expressly conditioned upon Vendor's acceptance of all the terms and condition of purchase contained on the purchase order.
5. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Vendor 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. 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. If the acceptance occurs after final payment, such amount shall be refunded to the City by the Vendor.
6. **ADVERTISING:** The Vendor shall not advertise or publish, without the City's prior written consent, the fact that the City has entered into the Agreement, except to the extent required by law.
7. **AMENDMENTS:** No agreement or understanding to modify this agreement shall be binding upon the City unless in writing and signed by the City's authorized agent. All specifications, drawings, and data submitted to the Vendor with this order are hereby incorporated and made a part hereof.
8. **ASSIGNMENT-DELEGATION:** The Agreement shall be binding upon and endure to the benefit of the City and the Vendor and their respective successors and assigns, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Vendor without the prior written consent of the City. Any attempted assignment or delegation by the Vendor shall be void unless made in conformity with this paragraph. The Agreement 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 Agreement.
9. **AWARDS:** The City may choose not to award an Agreement. Split awards between Vendors may be made at the sole discretion of the City. The City reserves the right to enter into an agreement or a purchase order with a single award, split awards, or use any combination that best serves the interest and at the sole discretion of the City.

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10. **CANCELLATION**: The City reserves the right to cancel the agreement for default of all or any part of the undelivered portion of the order if Vendor breaches any of the terms hereof including warranties or becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any remedies, which the City may have in law or equity.
11. **CLARIFICATION OF PROPOSALS**: The City reserves the right to request clarification or additional information specific to any proposal after all proposals have been received and the RFP close date has passed.
12. **CODES, PERMITS AND LICENSES**: The Vendor shall comply with all National, State and Local standards, codes and ordinances and the terms and conditions of the services of the electric utility, as well as other authorities that have jurisdiction pertaining to equipment and materials used and their application. None of the terms or provisions of the specification shall be construed as waiving any rules, regulations or requirements of these authorities. The Vendor shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill contractual obligations (City of Round Rock fees and costs may be waived).
13. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS**: **(apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way)** The Vendor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Vendor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Vendor's obligations under this paragraph.
14. **COMPLIANCE WITH LAWS**: The successful offeror shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of the resulting agreement or PO, including without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When requested, the Vendor shall furnish the City with satisfactory proof of its compliance.
15. **CONFIDENTIAL CITY INFORMATION**: In order to provide the deliverables to the City, Vendor may require access to certain records of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Vendor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information shall substantially injure the City and/or its licensors. The Vendor (including its employees, subcontractors, agents, or representatives) agrees that it shall maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Vendor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Vendor agrees to use protective measures no less stringent than the Vendor 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.
16. **CONFIDENTIALITY OF CONTENT**: All documents submitted in response to a solicitation shall be subject to the Texas Public Information Act. Following an award, responses are subject to release as public information unless the response or specific parts of the response can be shown to be exempt from the Texas Public Information Act. Pricing is not considered to be confidential under any circumstances.

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- 16.1. Information in a submittal that is legally protected as a trade secret or otherwise confidential must be clearly indicated with stamped, bold red letters stating "**CONFIDENTIAL**" on that section of the document. The City will not be responsible for any public disclosure of confidential information if it is not clearly marked as such.
- 16.2. If a request is made under the Texas Public Information Act to inspect information designated as confidential, the Respondent shall, upon request from the City, furnish sufficient written reasons and information as to why the information should be protected from disclosure. The matter will then be presented to the Attorney General of Texas for final determination.
17. **CONFLICT OF INTEREST:** Effective January 1, 2006, Chapter 176 of the Texas Local Government Code (House Bill 914) requires that any vendor or person considering doing business with a local government entity disclose the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. The Conflict of Interest Questionnaire form is available from the Texas Ethics Commission at www.ethics.state.tx.us. Completed Conflict of Interest Questionnaires may be mailed or delivered by hand to the City Secretary. If mailing a completed form, please mail to:
- City of Round Rock
City Secretary
221 East Main Street
Round Rock, Texas 78664**
- Any attempt to intentionally or unintentionally conceal or obfuscate a conflict of interest may automatically result in the disqualification of the vendor's offer.
18. **DAMAGE:** The Vendor shall be responsible for damage to the City's equipment or property, the workplace and its contents by its work, negligence in work, its personnel and equipment. The Vendor shall be responsible and liable for the safety; injury and health of its working personnel while its employees are performing service work.
19. **DEFAULT:** The Vendor shall be in default under the agreement if the Vendor:
- 19.1. Fails to fully, timely and faithfully perform any of its material obligations under the agreement,
- 19.2. Becomes insolvent or seeks relief under the bankruptcy laws of the United States or
- 19.3. Makes a material misrepresentation in Vendor's offer, or in any report or deliverable required to be submitted by the Vendor to the City.
20. **DELIVERY:** No substitutions or cancellations will be permitted without written approval of the City.
- 20.1. If delay is foreseen, Vendor shall give written notice to the City. The City has the right to extend delivery or service date or cancel the order or agreement. Vendor shall keep the City advised at all times of the status of the order. Default in promised delivery, service or failure to meet specifications, authorizes the City to purchase goods or services elsewhere and charge the full increase, if any, in cost and handling to defaulting vendor. Default on delivery may result in legal action and recourse.
- 20.2. Delivery shall be made between 8 AM and 4 PM Monday through Friday except on regularly observed state or federal holidays, unless prior approval has been obtained from the City or otherwise stated in the solicitation.
- 20.3. All deliverables shall be delivered at the delivery point specified. If goods are incorrectly delivered, Vendor shall be held responsible for any additional expense incurred in delivering them to their correct destination.
- 20.4. Receipt of deliverables does not constitute acceptance.



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21. **DELAYS:**

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

21.2. Neither party shall be liable for any default or delay in the performance of its obligations under this Agreement if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond reasonable control. In the event of default or delay in agreement performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

22. **DELIVERY TERMS AND TRANSPORTATION CHARGES:** Deliverables shall be shipped Freight On Board (FOB) Destination, freight prepaid and allowed unless otherwise specified on the purchase order or in the solicitation. The Vendor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth in the block of the purchase order entitled "Ship To".

23. **DISCLOSURE OF LITIGATION:** Each Respondent shall include in its proposal a complete disclosure of any civil or criminal litigation or investigation pending which involves the Respondent or in which the Respondent has been judged guilty.

24. **DISPUTE RESOLUTION:** If a dispute or claim arises under an Agreement, the parties agree to resolve the dispute or claim by appropriate internal means. If the parties cannot reach a mutually satisfactory resolution, any such dispute or claim will be sought to be resolved with the help of a mutually selected mediator. If the parties cannot agree on a mediator, City and Vendor shall each select a mediator and the two mediators shall agree upon a third mediator. Any costs and fees, other than attorney fees, associated with the mediation shall be shared equally by the parties.

City and Vendor hereby expressly agree that no claims or disputes between the parties arising out of or relating to the Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

25. **EFFECTIVE DATE/TERM:** Unless otherwise specified in the Solicitation, this Agreement shall be effective as of the date the agreement is signed by both parties, and shall continue in effect until all obligations are performed in accordance with the Agreement.

26. **EX PARTE COMMUNICATION:** Please note that to insure the fair evaluation of a solicitation, the City prohibits ex parte communication (e.g., unsolicited) initiated by the Respondent to a City representative evaluating or considering the solicitations prior to the time a decision has been made. Communication between Respondent and the City will be initiated by the appropriate City designee in order to obtain information or clarification needed to develop an accurate evaluation of the solicitation. Ex parte communication may be grounds for disqualifying the offending Respondent from consideration for award.

27. **EXCEPTIONS:** Any variation from this specification shall be indicated on the solicitation or on a separate attachment to the solicitation. The sheet shall be labeled as such.



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28. **FRAUD:** Fraudulent statements by a Respondent on a submittal or in any report or deliverable required to be submitted by the Respondent to the City shall be grounds for the termination of the Agreement for cause by the City and may result in legal action.
29. **GOODS:** The products furnished under said specification shall be the latest improved model in current production, as offered to commercial trade, and shall be of quality workmanship and material. The Vendor represents that all equipment offered under said specification shall be new. **USED, SHOPWORN, DEMONSTRATOR, PROTOTYPE, OR DISCONTINUED MODELS ARE NOT ACCEPTABLE.**
30. **GOVERNING LAW AND VENUE:** The Agreement is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Agreement shall be resolved in the courts of Williamson 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.
31. **INDEMNITY:** Vendor shall indemnify, save harmless and defend the City, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees and any and all other costs or fees incident to the performance of the resulting agreement and arising out of a willful or negligent act or omission of the Vendor, its officers, agents, servants and employees.
32. **INDEPENDENT CONTRACTOR:** An Agreement with the City shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Vendor's services shall be those of an independent contractor. The Vendor agrees and understands that an Agreement with the City does not grant any rights or privileges established for employees of the City. The Contractor shall not be within protection or coverage of the City's Worker' Compensation insurance, Health Insurance, Liability Insurance or any other insurance that the City from time to time may have in force and effect.
33. **INSURANCE:** The Vendor shall meet or exceed ALL insurance requirements set forth by the City as identified in http://roundrocktexas.gov/docs/corr_insurance_06.2011.pdf. Any additional insurance requirements of participating or cooperative parties will be included as subsequent Attachments and shall require mandatory compliance.
34. **INTERLOCAL COOPERATIVE CONTRACTING (PIGGYBACK):** Other governmental entities may be extended the opportunity to purchase off of the City's Agreements, with the consent and agreement of the awarded vendor(s) and the City. Such consent and agreement shall be conclusively inferred from lack of exception to this clause in a Respondent's submittal. However, all parties indicate their understanding and hereby expressly agree that the City is not an agent of, partner to, or representative of those outside agencies or entities and that the City is not obligated or liable for any action or debts that may arise out of such independently-negotiated "piggyback" procurements.
35. **INTERPRETATION:** An Agreement 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 an Agreement. Although an Agreement 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 an Agreement, the UCC definition shall control, unless otherwise defined in an Agreement.



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36. **INVOICING:**

36.1. The Vendor shall submit separate invoices in duplicate for each purchase order or Agreement. If partial shipments or deliveries are authorized by the City, a separate invoice shall be sent for each shipment or delivery made. Vendor shall submit invoices as required per the Agreement or purchase order to:

**City of Round Rock
ATTN: Accounts Payable
221 East Main Street
Round Rock, TX 78664-5299**

36.2. **Proper invoices shall include a unique invoice number, the purchase order or agreement reference if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Vendor'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 Vendor's invoice.

36.3. Invoices for labor shall include a copy of all time-sheets with trade labor rate and clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates. Time billed for labor shall be limited to hours actually worked at the work site.

36.4. Invoicing for an Agreement containing a phased payment structure shall be submitted and based on the agreed upon schedule of events and deliverables with all supporting documentation for review and approval by the City.

37. **LABOR:** The Vendor shall provide all labor and goods necessary to perform the service. The Vendor shall employ all personnel for work in accordance with the requirements set forth by the United States Department of Labor.

38. **LIABILITY:** A Vendor performing services pursuant to an Agreement or purchase order shall be liable for all damages incurred while in performance of such services. Vendor assumes full responsibility for the work to be performed hereunder and hereby releases, relinquishes, and discharges the City, its officers, agents, and employees, from all claims, demands, and causes of action of every kind and character including the cost of defense thereof, for any injury to, including death of, any person whether that person be a third person, supplier, or an employee of either of the parties hereto, and any loss of or damage to property, whether the same be that of either of the parties, caused by or alleged to be caused by, arising out of or in connection with the issuance of the Agreement or order to Vendor, whether or not said claims, demands and causes of action in whole or in part are covered by insurance. The City's insurance requirements apply set forth by the City as identified in http://roundrocktexas.gov/docs/corr_insurance_06.2011.pdf.

39. **LIENS:** Vendor agrees to and shall indemnify and save harmless the City against any and all liens and encumbrances for all labor, goods and services which may be provided under the resulting agreement. At the City's request the Vendor or subcontractors shall provide a proper release of all liens or satisfactory evidence of freedom from liens shall be delivered to the City.

40. **MATERIAL SAFETY DATA SHEETS:** Under the "Hazardous Communication Act", commonly known as the "Texas Right To Know Act", a Vendor shall provide to the City with each delivery, material safety data sheets, which are applicable to hazardous substances, defined in the Act.

41. **NO CONTINGENT FEES:** The Vendor warrants that they have not employed or retained any company or person other than a bona fide employee working solely for the Vendor to solicit or secure the agreement, and that they have not paid or agreed to pay any company or person other than a bona fide employee working solely for the Vendor any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of the agreement. For breach or violation of their warranty, the City will have the right to annul the agreement without

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liability or, in its discretion, to deduct from the agreement, price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage or contingent fee.

42. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: The Vendor represents and warrants to the City that: (i) the Vendor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Vendor in accordance with the specifications in the Agreement will not infringe, directly or contributory, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Vendor does not know of any valid basis for any such claims. The Vendor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Vendor's breach of any of Vendor's representations or warranties stated in this Agreement. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Vendor agrees that the City's specifications regarding the deliverables shall in no way diminish Vendor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Vendor.
43. **NON-APPROPRIATION**: The resulting Agreement is a commitment of the City's current revenues only. It is understood and agreed the City shall have the right to terminate the Agreement at the end of any City fiscal year if the governing body of the City does not appropriate funds sufficient to purchase the estimated yearly quantities, as determined by the City's budget for the fiscal year in question. The City may affect such termination by giving Vendor a written notice of termination at the end of its then current fiscal year.
44. **OVERCHARGES**: Vendor hereby assigns to the purchaser any and all claims for overcharges associated with this agreement which arise under the antitrust laws of the United States, 15 USGA Section 1 et seq., and which arise under the antitrust laws of the State of Texas, Bus. and Com. Code, Section 15.01, et seq.
45. **PROMPT PAYMENT POLICY**: Payments will be made in accordance with the Texas Prompt Payment Law, Texas Government Code, Subtitle F, Chapter 2251. The City will pay Vendor within thirty days after the acceptance of the supplies, materials, equipment, or the day on which the performance of services was completed or the day, on which the City receives a correct invoice for the supplies, materials, equipment or services, whichever is later. The Vendor may charge a late fee (fee shall not be greater than that which is permitted by Texas law) for payments not made in accordance with this prompt payment policy; however, this policy does not apply to payments made by the City in the event:
- 45.1. There is a bona fide dispute between the City and Vendor concerning the supplies, materials, services or equipment delivered or the services performed that causes the payment to be late; or
 - 45.2. The terms of a federal agreement, grant, regulation, or statute prevent the City from making a timely payment with Federal Funds; or
 - 45.3. There is a bona fide dispute between the Vendor and a subcontractor or between a subcontractor and its suppliers concerning supplies, material, or equipment delivered or the services performed which caused the payment to be late; or
 - 45.4. The invoice is not mailed to the City in strict accordance with instructions, if any, on the purchase order or agreement or other such contractual agreement.



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46. **PLACE AND CONDITION OF WORK:** (apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way) The City will provide the Vendor access to the sites where the Vendor is to perform the services as required in order for the Vendor to perform in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Vendor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Vendor's obligations under the agreement. The Vendor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.
47. **PREPARATION OF RESPONSE COSTS:** All costs directly or indirectly related to preparation of a response to this solicitation or any oral presentation required to supplement and/or clarify a proposal which may be required by the City shall be the sole responsibility of the Respondent.
48. **RIGHT OF INSPECTION AND REJECTION:** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery or at a reasonable time subsequent to delivery and to reject defective or non-conforming deliverables. If the City has the right to inspect the Vendor's, or the Vendor's Subcontractor's, facilities, or the deliverables at the Vendor's, or the Vendor's Subcontractor's, premises, the Vendor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
49. **RIGHT TO AUDIT:**
- 49.1. The Vendor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the rights to audit, examine, or reproduce, any and all records of the Vendor related to the performance under this Agreement. The Vendor shall retain all such records for a period of three (3) years after final payment on this Agreement or until all audit and litigation matters that the City has brought to the attention of the Vendor are resolved, whichever is longer. The Vendor agrees to refund to the City any overpayments disclosed by any such audit.
- 49.2. The Vendor shall include section 49.1 above in all subcontractor agreements entered into in connection with this Agreement.
50. **SERVICE:** Vendor shall have service and maintenance available to the City and shall be able to respond to a request for service as specified.
- 50.1. Consistent failure by the vendor to respond to service calls within the allowed response time may place the vendor in default and subject to cancellation of the purchase order and, or agreement. Consistent failure is defined as not responding within the allowed response time at any or all locations on two (2) out of three (3) consecutive occurrences.
- 50.2. Service technicians shall be fully qualified to work on the listed equipment and employed by the vendor on the effective date of the agreement. Vendor shall be able to verify that service personnel have had training with a minimum of one year of "hands on" experience working on the listed equipment.
51. **SHIPMENT UNDER RESERVATION PROHIBITED:** The Vendor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.
52. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Vendor 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 Vendor shall cease all work until notified by the City that the violation or unsafe condition has been corrected. The Vendor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

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The Vendor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Vendor is responsible for the Vendor's own acts and omissions. The Vendor shall:

53.1. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Agreement;

53.2. require that all Subcontractors obtain and maintain, throughout the term of their agreement, primary insurance in the type and amounts specified for the Vendor, with the City being named as an additional insured; and

53.3. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

54. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Agreement 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 Agreement.

55. **TAX EXEMPTION:** The City of Round Rock is exempt from all federal excise, state and local taxes unless otherwise stated in this document. The City claims exemption from all sales and/or use taxes under Texas Tax Code §151.309, as amended. Texas Limited Sales Tax Exemption Certificates will be furnished upon request. Vendors shall not charge for said taxes. If billed, City will not remit payment until invoice is corrected.

56. **TERMINATION FOR CAUSE:** In the event of a default by the Vendor, the City shall have the right to terminate the Agreement for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Vendor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Vendor's default, including, without limitation, solicitation cost, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Vendor, the City may remove the Vendor from the City's vendor list for three (3) years and any Offer submitted by the Vendor may be disqualified for up to three (3) years. All rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.

57. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Agreement, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Vendor shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay the Vendor, 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.

58. **TITLE & RISK OF LOSS:** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables (no delivery no sale).

59. **VENDOR'S OBLIGATIONS:** The Vendor shall fully and timely provide all deliverables described in the Solicitation or Purchase Order and in the Vendor's response in strict accordance with the terms, covenants, and conditions of the Agreement and all applicable Federal, State, and local laws, rules, and regulations.

60. **VENUE:** Both the City and the Vendor agree that venue for any litigation arising from a resulting agreement shall lie in Williamson County.

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61. **WARRANTY-PRICE:** The agreement price shall be firm for the duration of the agreement or extension periods. No separate line item charges shall be permitted for either response or invoice purposes, which shall include equipment rental, demurrage, fuel surcharges, delivery charges, and cost associated with obtaining permits or any other extraneous charges. Vendor further certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
62. **WARRANTY:** The goods specified shall be warranted against defects in material and workmanship for a period of not less than twelve (12) months beginning with the date of acceptance. If the manufacturer's standard warranty exceeds twelve (12) months, then the manufacturer's standard warranty shall be in effect. The successful bidder shall furnish a copy of the manufacturer's warranty at time of delivery.
63. **WORKFORCE: (apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way)**
- 63.1. The Vendor shall employ only orderly and competent workers, skilled in the performance of the services which they shall perform under the Agreement.
- 63.2. The Vendor, its employees, subcontractors, and subcontractor's employees while engaged in participating in an Agreement or Purchase Order or while in the course and scope of delivering goods or services under a City agreement may not:
- 63.2.1. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the agreement; or
- 63.2.2. 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 controlled substances, on the job.
- 63.3. If the City or the City's representative notifies the Vendor that any worker proves to be disorderly, disobedient or incompetent, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or controlled substances on the job, the Vendor shall immediately remove such worker from Agreement services, and may not employ such worker again on Agreement services without the City's prior written consent.