

**CITY OF AUSTIN
AUSTIN PUBLIC HEALTH
SOLICITATION INSTRUCTIONS**

1. EQUAL OPPORTUNITY:

- A. **Equal Employment Opportunity:** No Grantee, or Grantee's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Application submitted to the City shall be considered, nor any Purchase Order issued, or any Agreement awarded by the City unless the Applicant 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 agreement and the Grantee's suspension or debarment from participation on future City agreements/contracts until deemed compliant with Chapter 5-4.
- B. **Americans with Disabilities Act (ADA) Compliance:** No Grantee, or Grantee'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.

2. SOLICITATION:

- A. **Review of Documents:** Applicants are expected to examine all documents that make up the Solicitation. Applicants shall promptly notify the City of any omission, ambiguity, inconsistency or error that they may discover upon examination of the Solicitation. Applicants must use a complete Solicitation to prepare Applications. The City assumes no responsibility for any errors or misrepresentations that result from the use of incomplete Solicitations.

3. WRITTEN EXPLANATIONS OR CLARIFICATIONS: Any material information given to one Applicant concerning a Solicitation will be furnished as an Addendum to all Applicants who have been issued a Solicitation. Any explanation, clarification, interpretation or change to the Solicitation made in any other manner is not binding upon the City, and Applicants shall not rely upon such explanation, clarification, interpretation or change. Oral explanations or instructions given before the award of the Agreement are not binding. Requests for explanations, clarifications or interpretations must be emailed to the Single Point of Contact, Laura.Enderle@austintexas.gov.

4. PREPARATION OF APPLICATIONS:

- A. **Alternate Applications:** Alternate Applications will be rejected unless the Solicitation authorizes the submission of Alternates.
- B. **Application Preparation Costs:** All costs directly or indirectly related to the preparation of an Application to a Request for Grant Application or any oral presentation required to supplement and/or clarify an Application which may be required by the City shall be the sole responsibility of the Applicant.
- C. **Exceptions:** Exceptions that are taken to any portion of the Solicitation may jeopardize acceptance of the Application.
- D. **Proprietary Information:**
 - i. All material submitted to the City becomes public property and is subject to the Texas Public Information Act, Chapter 552, Texas Government Code, upon receipt.
 - ii. If an Applicant does not desire proprietary information in the Application to be disclosed, each page must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General.
 - iii. Failure to identify proprietary information will result in all unmarked sections being deemed nonproprietary and available upon public request

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- E. **Signature:** The Applicant must sign each document in the Solicitation requiring a signature. Any change made to the Application must be initialed by the Applicant.
- F. **Taxes:** Purchases of Goods or Services for City use are usually exempt from City, State, and most Federal Taxes. Applications should not include exempted taxes. The successful Applicant should request a Tax Exemption Certificate from the Purchasing Office. Under no circumstances shall the City be liable to pay exempt taxes under any Contract.
- G. **Anti-Lobbying and Procurement:** Article 6, Chapter 2-7, City Code, repealed and replaced effective on June 25, 2018, prohibits lobbying activities or representations by Applicant during the No-Lobbying Period.

1. FINDINGS; PURPOSE.

- (A) The council finds that persons who enter a competitive process for a city contract voluntarily agree to abide by the terms of the competitive process, including the provisions of this article.
- (B) The council finds that it is in the City's interest:
 - (i) to provide the most fair, equitable, and competitive process possible for selection among potential vendors in order to acquire the best and most competitive goods and services; and
 - (ii) to further compliance with State law procurement requirements.
- (C) The council intends that:
 - (i) each response is considered on the same basis as all others; and
 - (ii) respondents have equal access to information regarding a solicitation, and the same opportunity to present information regarding the solicitation for consideration by the City.

2. APPLICABILITY.

- (A) **This article applies to all solicitations except:**
 - (i) City social service funding;**
 - (ii) City cultural arts funding;
 - (iii) federal, state or City block grant funding;
 - (iv) the sale or rental of real property;
 - (v) interlocal contracts or agreements; and
 - (vi) solicitations specifically exempted from this article by council.
- (B) Absent an affirmative determination by the council, the purchasing officer has the discretion to apply this article to any other competitive process.
- (C) City Code Section 1-1-99 (*Offenses; General Penalty*) does not apply to this article.

3. DEFINITIONS.

In this article:

- (A) AGENT means a person authorized by a respondent to act for or in place of the respondent in order to communicate on behalf of that respondent. Each of the following is presumed to be an agent:
 - (i) a current full-time or part-time employee, owner, director, officer, member, or manager of a respondent;
 - (ii) a person related within the first degree of consanguinity or affinity to a current full-time or part-time employee, owner, director, officer, member, or manager of a respondent;
 - (iii) a person related within the first degree of consanguinity or affinity to the respondent, if a respondent is an individual person; and
 - (iv) a lobbyist, attorney, or other legal representative of the respondent that has been retained by the respondent with respect to the subject matter of either the solicitation or the respondent's response to the solicitation.

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- (B) AUTHORIZED CONTACT PERSON means a City employee designated in a City solicitation as the point of contact for all purposes for that solicitation.
- (C) CITY EMPLOYEE is defined in Section 2-7-2 (*Definitions*), and further includes an independent contractor hired by the City with respect to the solicitation.
- (D) CITY OFFICIAL is defined in Section 2-7-2 (*Definitions*).
- (E) NO-LOBBYING PERIOD means the period of time beginning at the date and time a solicitation is published and continuing through the earliest of the following:
 - (i) the date the last contract resulting from the solicitation is signed;
 - (ii) 60 days following council authorization of the last contract resulting from the solicitation; or
 - (iii) cancellation of the solicitation by the City
- (F) PURCHASING OFFICER means the City employee authorized to carry out the purchasing and procurement functions and authority of the City.
- (G) RESPONSE means a written offer or submission in reply to a solicitation.
- (H) RESPONDENT means a person or entity that has timely submitted or subsequently timely submits a response to a City solicitation, even if that person subsequently withdraws its response or has been disqualified by the City for any reason. Respondent includes:
 - (i) a subsidiary or parent of a respondent;
 - (ii) a joint enterprise, joint venture, or partnership with an interest in a response and in which a respondent is a member or is otherwise involved, including any partner in such joint enterprise, joint venture, or partnership; and
 - (iii) a subcontractor to a respondent in connection with that respondent's response.
- (I) SOLICITATION means an opportunity to compete to conduct business with the City that requires council approval under City Charter Article VII Section 15 (*Purchase Procedure*), and includes, without limitation:
 - (i) an invitation for bids;
 - (ii) a request for proposals;
 - (iii) a request for qualifications;
 - (iv) a notice of funding availability; and
 - (v) any other competitive solicitation process for which the purchasing officer, in the purchasing officer's sole discretion, affirmatively determines this article should apply in accordance with Section 2-B.

4. RESTRICTION ON LOBBYING.

Subject to the exclusions in Section 5 (*Permitted Communications*), during a no-lobbying period,

- (A) a respondent or an agent shall not communicate directly with a City official or a City employee, or both in order to:
 - (i) provide substantive information about any respondent or response with respect to the solicitation to which the communication relates;
 - (ii) encourage the City to reject one or more of the responses to the solicitation to which the communication relates;
 - (iii) convey a complaint about the solicitation to which the communication relates; or
 - (iv) ask any City official or City employee to favor or oppose, recommend or not recommend, vote for or against, consider or not consider, or take action or refrain from taking action on any vote, decision, or agenda item regarding the solicitation to which the communication relates.
- (B) a City official shall not contact or communicate with a respondent regarding a response or the solicitation to which the no-lobbying period applies;
- (C) a City employee, other than the authorized contact person, shall not contact or communicate with a respondent regarding a response or the solicitation to which the no-lobbying period applies.

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5. PERMITTED COMMUNICATIONS.

The following communications are permitted under this article at any time:

- (A) any communication between a respondent or agent and any authorized contact person, including, without limitation and in accordance with regulation, any complaint concerning the solicitation;
- (B) any communication between a respondent or agent and any person to the extent the communication relates solely to an existing contract between a respondent and the City, even when the scope, products, or services of the current contract are the same or similar to those contained in an active solicitation;
- (C) any communication between a respondent or an agent and a City employee to the extent the communication relates solely to a non-substantive, procedural matter related to a response or solicitation;
- (D) any communication required by or made during the course of a formal protest hearing related to a solicitation;
- (E) any communication between a respondent or an agent and the City's Small & Minority Business Resources Department, that solely relates to compliance with Chapters 2-9A through 2-9D (*Minority-Owned and Women-Owned Business Enterprise Procurement Program*) of the City Code;
- (F) any communication between an attorney representing a respondent and an attorney authorized to represent the City, to the extent the communication is permitted by the Texas Disciplinary Rules of Professional Conduct;
- (G) any communication made by a respondent or an agent to the applicable governing body during the course of a meeting properly noticed and held under Texas Government Code Chapter 551 (*Open Meetings Act*);
- (H) any communication between a respondent or an agent and a City employee whose official responsibility encompasses the setting of minimum insurance requirements for the solicitation to which the communication relates, to the extent the communication relates solely to the insurance requirements established by the City in the solicitation; and
- (I) any contribution or expenditure as defined in Chapter 2-2 (*Campaign Finance*).

6. MODIFICATION OF RESTRICTION.

The purchasing officer may waive, modify, or reduce the requirements in Section 4 (*Restrictions on Lobbying*) in order to allow respondents to communicate with a City employee or a City official other than the authorized contact person when the purchasing officer determines, in writing, that the solicitation must be conducted in an expedited manner, including but not limited to a solicitation conducted for reasons of health or safety under the shortest schedule possible with no extensions. Any such modification authorized by the purchasing officer shall be stated in the solicitation.

7. NOTICE.

- (A) Each solicitation shall include a notice advising respondents and prospective respondents:
 - (i) of the requirements of this article;
 - (ii) that any communication initiated by a City employee or City official, other than the authorized contact person, during the no-lobbying period regarding a response or the solicitation may result in a violation of Section 4(A) if the respondent subsequently lobbies that City employee or City official.
- (B) The purchasing officer, or a City employee designated by the purchasing officer, shall provide weekly written notice, accessible to all City employees and City officials, of each solicitation for which the no-lobbying period is ineffect.

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8. DISCLOSURE OF VIOLATION.

A City official or a City employee other than the authorized contact person that becomes aware of a violation of Section 4 (*Restrictions on Lobbying*) shall notify the authorized contact person in writing as soon as practicable.

9. ENFORCEMENT.

- (A) A respondent that has been disqualified pursuant to Section 10(A) (*Disqualification; Contract Voidable*) may appeal such disqualification to a subcommittee that is less than a quorum of the Ethics Review Commission established in Chapter 2-7, Article 2 (*Ethics Review Commission*), whose decision on appeal shall be final and binding. Any appeal must be filed in the manner prescribed by the Ethics Review Commission within 5 calendar days of the notice given by the purchasing officer pursuant to Section 10(B).
- (B) The purchasing officer shall waive a violation of Section 4(A) if the violation was solely the result of communications initiated by a City official or a City employee other than the authorized contact person.
- (C) The purchasing officer has the authority to enforce this article through rules promulgated in accordance with Chapter 1-2 (*Adoption of Rules*), which at a minimum shall include a notice and protest process for respondents disqualified pursuant to Section 10 (*Disqualification; Contract Voidable*), including:
 - (1) written notice of the disqualification imposed pursuant to Section 10 (*Disqualification; Contract Voidable*);
 - (2) written notice of the right to protest the disqualification imposed; and
 - (3) written notice of the right to request an impartial hearing process.

10. DISQUALIFICATION; CONTRACT VOIDABLE.

- (A) If the purchasing officer finds that a respondent has violated Section 2-7-104(1), the respondent is disqualified from participating in the solicitation to which the violation related.
- (B) The purchasing officer shall promptly provide written notice of disqualification to a disqualified respondent.
- (C) If a respondent is disqualified from participating in a solicitation as a result of violating Section 2-7-104(1) and the solicitation is cancelled for any reason, that respondent is also disqualified from submitting a response to any reissue of the same or similar solicitation for the same or similar project. For the purposes of this section, the purchasing officer may determine whether any particular solicitation constitutes a “same or similar solicitation for the same or similar project”.
- (D) If a respondent violates Section 104(1) and is awarded a contract resulting from the solicitation to which the violation relates, the City may void that contract.
- (E) Respondents that violate Section 2-7-104(1) three or more times during a five year period may be subject to debarment from participating in any new contracts with the City for a period of up to three years.

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5. **SUBMISSION OF APPLICATIONS:** Applicants are required to submit an original and 5 (five) copies of the Application as specified on the Offer Sheet of the Solicitation.

A. **Mailing/Delivery:** Applications must be submitted in a sealed envelope or container marked on the outside with the:

**Applicant's Name
Program Name
Solicitation Number**

Address for US Mail (Only)	Address for Fedex, UPS, Hand Delivery or Courier Service
Austin Public Health	Austin Public Health
Response Enclosed for Solicitation #	Response Enclosed for Solicitation #
P.O. Box 1088	7201 Levander Loop, Building H
Austin, Texas 78767-8845	Austin, Texas 78702
	Phone: (512) 972-5203

Note: Applications that are not submitted in a sealed envelope or container will not be considered.

i. Unless authorized in the Solicitation, email, facsimile, or electronic Applications will not be accepted.

B. **Acceptance of Applications:** Applications must be received and time stamped prior to the Due Date and Time. The time stamp clock at Austin Public Health is the official time of record. It is the sole responsibility of the Applicant to ensure timely delivery of the Application. The City will not be responsible for failure of service on the part of the U.S. Postal Office, courier companies, or any other form of delivery service chosen by the Applicant.

C. **Late Applications:** All Applications received after the Due Date and Time are considered late and will be returned to the Applicant. It is the responsibility of the Applicant to ensure that their Application arrives at the proper location by the time and date indicated. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Application arriving on time. Late Applications will be rejected unless Austin Public Health, at its sole discretion, determines that the City's misdirection or mishandling was the sole or main cause for the Application's late receipt at the designated location.

D. **Rejection of Applications:** The City reserves the right to reject any or all Applications and to waive any minor informality in any Application or solicitation procedure (a minor informality is one that does not affect the competitiveness of the Application).

6. **MODIFICATION OR WITHDRAWAL OF APPLICATIONS:**

A. **Modification of Applications:** Applications may be modified in writing at any time prior to the Due Date.

B. **Withdrawal of Applications:** Applications may be withdrawn in writing, by email, or by facsimile (provided that the facsimile is signed by the Applicant) at any time prior to the Due Date. An Applicant may also withdraw an Application in person, provided the withdrawal is made prior to the Due Date. A receipt of withdrawal must be signed by the Applicant. Withdrawn Applications may be resubmitted, with or without modifications, up to the Due Date.

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7. EVALUATION FACTORS AND AWARD FOR APPLICATIONS, PROPOSALS AND RESPONSES:

Competitive Selection: This procurement will comply with applicable City of Austin Policy. The successful Applicant(s) will be selected by the City on a rational basis. Evaluation factors outlined in Section 0500 of the Solicitation shall be applied to all eligible, responsive Applicants in comparing applications and selecting the successful Applicant. Award of an agreement may be made without discussion with Applicants after applications are received. Applications should, therefore, be submitted on the most favorable terms.

8. RESERVATIONS: The City expressly reserves the right to:

- A. specify approximate quantities in the Solicitation;
- B. extend the Solicitation closing date and time;
- C. waive as an informality, minor deviations from specifications provided they do not affect competition or result in functionally unacceptable Goods or Services;
- D. waive any minor informality in any Application or Solicitation procedure (a minor informality is one that does not affect the competitiveness of the Applicant);
- E. add additional terms or modify existing terms in the Solicitation;
- F. reject an Application containing exceptions, additions, qualifications or conditions not called for in the solicitation;
- G. reject an Application received from an Applicant who is currently debarred or suspended by the City or State;
- H. reject an Application received from an Applicant who is currently debarred or suspended by the Federal Government (Applicable if project receives Federal funding);
- I. reject an Application that contains fraudulent information;
- J. reject an Application that has material omissions;
- K. reject or cancel any or all Applications;
- L. cancel a Solicitation
- M. reissue a Solicitation;
- N. procure any item by other means;
- O. consider and accept alternate Applications, if specified in the Solicitation, when most advantageous to the City; and/or
- P. reject an Application because of unbalanced unit prices;

9. NEGOTIATIONS OF PROPOSALS: The City reserves the right to negotiate all elements which comprise the Applicant's Proposal to ensure that the best possible consideration be afforded to all concerned.

10. AGREEMENT INCORPORATION: Applicant should be aware that the contents of the successful Application will become a part of the subsequent agreement documents. Failure of the successful Applicant to accept this obligation may result in the cancellation of any award. Any damages accruing to the City as a result of the successful Applicant's failure to contract may be recovered from the successful Applicant.

11. INTERESTED PARTIES DISCLOSURE

As a condition to entering the Agreement, the Business Entity constituting the Applicant 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 Applicant. The Applicant 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/whatsnew/elf_info_form1295.htm

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12. POST APPLICATION DOCUMENTS REQUIRED FROM SUCCESSFUL APPLICANT:

- A. **Certificates of Insurance:** The Applicant shall provide Certificates of Insurance in the amounts and for the coverages required to Austin Public Health in conjunction with the Terms and Conditions of the Agreement and prior to delivery of services. (See also "Insurance" in Section 0400 of the Solicitation).
- B. **Bonds:** When Bonds are required, the Applicant must provide the bonds prior to the execution of the Contract. The Applicant shall provide the Bonds, in the amounts and on the conditions required, within 14 calendar days after notification of award, or as otherwise required by the Solicitation.
- C. **Chapter 176 Conflict of Interest Disclosure:** In accordance with Chapter 176 of the Texas Local Government Code, Applicant must file a Conflict of Interest Questionnaire with the Office of the City Clerk no later than 5:00 P.M. on the seventh (7th) business day after the commencement of contract discussions or negotiations with the City or the submission of an Application, or other writing related to a potential Contract with the City. The questionnaire is available on line at the following website for the City Clerk:

<http://www.austintexas.gov/department/conflict-interest-questionnaire>

There are statutory penalties for failure to comply with Chapter 176.