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Request for Proposals

**Market Analysis and Financial Feasibility Study for a
Hotel Convention Center in Seguin, TX**

Prepared by
City of Seguin
Convention & Visitor Bureau and
Purchasing Department

June 2022

REQUEST FOR PROPOSALS

The City of Seguin and Seguin Convention & Visitor Bureau is seeking the services of a qualified and experienced consulting firm(s) to prepare a Market Analysis and Financial Feasibility Study for the construction of a hotel convention center in Seguin, Texas. Sealed proposals addressed to the City Secretary of the City of Seguin, Texas will be received at City Hall, 205 North River Street, Seguin, Texas until 3:00 p.m. local time, on Tuesday, July 12, 2022. At 3:00 p.m. the name of all firms submitting a proposal will be read publicly but no contents of the proposals will be disclosed. Any proposal received after closing time will not be considered.

Proposals should be submitted to the Office of the City Secretary, City of Seguin, 205 N. River, Seguin, Texas 78155, in an envelope no smaller than 8 ½" x 11" and clearly marked in the lower left hand corner:

RFP: Feasibility Study

RFQ #TF-2022-27

To be opened at 3:00 p.m., Tuesday, July 12, 2022

Specification documents are available on the City of Seguin website www.seguintexas.gov, or by request made to the City of Seguin Purchasing Department.

The City of Seguin reserves the right to reject or accept any and all proposals, and to waive informalities. The City Council's decision will be final.

STEVE PARKER, CITY MANAGER
CITY OF SEGUIN, TEXAS

INTRODUCTION

The City of Seguin and Seguin Convention & Visitor Bureau, also known as Visit Seguin, is issuing this Request for Proposals (RFP) for a feasibility study to assess the viability of a convention center and adjoining hotel within Seguin, TX. This RFP describes the study background, proposed scope of services, schedule, and submission requirements. The study would also examine the current condition of meeting facilities, appropriate size of the convention center and hotel based on existing and future demand, evaluate the best site for these amenities, recommend partnering strategies and funding options, determine associated capital and operating costs and assess the economic impact a convention center and hotel would have on the local economy.

STUDY LOCATION

Seguin, Texas, population 29,433 is located in the San Antonio MSA on Interstate 10. Located at the terminus of State Highway 130, the community is served by both the San Antonio International Airport and the Austin Bergstrom Airport. Seguin is a large manufacturing hub with over three times the national average manufacturing employment as it is home to Caterpillar, Inc., Alamo Group, Vitesco, Tyson Foods, and many others. Other large employers include Texas Lutheran University, Guadalupe Regional Medical Center, Seguin ISD, City of Seguin, and Guadalupe County.

With the Guadalupe River flowing through the community with five lakes surrounding Seguin, water recreation is a large draw for tourists. Additionally, Seguin's rich history at one of the oldest cities in Texas, founded in 1838 just 16 months after the Texas Revolution, makes heritage tourism one of the largest draws to the community. Recently with the completion of new sporting fields and amenities, Seguin has seen a large increase in sporting events driving overnight stays at local hotels.

CONVENTION FACILITIES OVERVIEW

Seguin, Texas has nine limited-service hotels, several with small meeting space, and over 150 short term rentals, but does not have a full-service convention center hotel. Seguin has multiple stand-alone meeting facilities with the largest being the Seguin Coliseum at 12,000 square feet located at the Seguin Events Complex. Additional meeting facilities include Soel Venue, Texas Theatre, the Big Red Barn, and civic club buildings. The City of Seguin is interested in determining if demand exists for convention/conference facilities with an attached hotel in Seguin to serve local, regional, and national users.

The overall goal of the analysis requested by the City of Seguin is to determine if demand exists for expansion of the existing coliseum, or new construction of a convention campus with potential elements including a convention center, conference center, performing arts center, and full-service hotel in City of Seguin. The requested analysis will determine if a convention campus could establish City of Seguin as a destination for meetings, conventions,

and performing arts in metropolitan San Antonio. The City of Seguin is interested in exploring the potential for public/private cooperation in the development and/or operation of the convention campus to create a risk-averse financing plan with maximum benefits to the community. At this time, the City of Seguin is requesting proposals from qualified firms to conduct demand, site, financial, and economic impact analyses for the proposed convention center.

SCOPE OF WORK

This study will provide an analysis of convention, conference, cultural, sporting, and performing arts markets and identifies the characteristics necessary for the City of Seguin to effectively compete. The tasks conducted will identify issues related to this competitive environment and illustrate local, regional, national and global trends related to supply and demand, event needs, and destination requirements including an analysis of the hotel market.

Consultant will prepare a summary report that will utilize the results of the market demand analysis and will include the recommended building program, facility utilization, site selection evaluation, financing options, operating revenue and expenses, development cost analysis and economic impact analysis.

TASK I MARKET DEMAND ANALYSIS

Consultant will provide an analysis of the convention, hotel, and event market and determine the current and future market demand for a convention center and adjoining hotel within the City of Seguin. As part of this objective, Consultant will provide a thorough overview of competing facilities, their viability, and the impact of a facility in the City of Seguin entering the market.

- Provide a summary of **other facilities in the market**, including their capacity, their utilization rate, and general information about their operating budget.
- Estimate the approximate **number of events** per year for a City of Seguin convention center by event type (e.g., conventions, trade shows or exhibitions, business meetings, banquets/social events, etc.)
- Project the probable annual **attendance figures** for the convention center by event type and indicate marketing and operational approaches for maximizing attendance and facility usage.
- Estimate the approximate number of events per year for utilization of the convention center and hotel by event type and the percentage occupancy and the **estimated attendance figures** for each of the different event profiles that may be hosted by the facility.
- Provide a summary of the potential impact a convention center in the City of Seguin might have on other local facilities. It will be vital to understand if success for a new convention center would come at the expense of nearby facilities, or whether the facility could be designed in such a way as to complement other local facilities and grow the overall events market.
- Determine any market constraints or challenges of developing the project.

TASK II HOTEL DEMAND ANALYSIS

The following tasks will address the market potential for new hotel development in the City of Seguin and provide facility specifications:

Economic Overview

Analysis of factors that impact the demand for lodging facilities including the following:

- Area, neighborhood and general market overview and analysis
- Economic and demographic data
- Convention market
- Tourism
- Commercial (hotel, residential and office) development
- Business activity
- Other relevant trends and indicators

City of Seguin Lodging Market Overview

- Analysis of the inventory of lodging facilities in the City of Seguin and ETJ by type and/or segment.
- Analysis of occupancy and average daily rate (ADR) trends
- Summary of Seguin lodging facilities will be provided, including all hotels proposed, planned and under-construction in the local market.
- Analysis of historical occupancy, ADR, and revenue per available room for the City of Seguin lodging market.

Historical Market Performance

- Market segmentation analysis for analyzed hotels
- Identification and analysis of demand characteristics, as available

Estimates of Demand

Consultant will analyze the potential for new hotel development based on historical levels of hotel demand, anticipated demand growth and historical and anticipated changes in the supply of guest rooms in Seguin, Texas. Changes in average daily room rates among the comparable properties will also be examined. Analysis should include a description of the market position of the potential development, estimated number of rooms, and anticipated ranges of occupancy and average daily room rates. Estimates of demand for the lodging market and competitive analysis and potential development opportunities will include the following:

- Estimates of demand growth, by segment
- Induced and displaced demand estimates
- Analysis of competitive advantages and disadvantages of the market
- Identify levels of new demand required (commercial, convention and other incremental demand) that might justify the addition of a new hotel.

TASK III PROGRAM AND FACILITY RECOMMENDATIONS

Based on results from the market and hotel study, the types of facilities most appropriate for the City of Seguin will be identified. This task will specify the appropriate facilities and configurations for the following:

Convention/Conference Center

- Exhibition/multipurpose space (size, configuration, ceiling height, utilities, live floor load, column spacing)
- Meeting rooms (number, size, configuration)
- Ballroom/banquet space (configuration)
- Kitchen and pantry requirements (location)
- Lobby pre-function and registration areas (location)
- Other building spaces (service corridors, layout, etc.)
- Estimated total gross square footage for “rentable space”
- Parking spaces

Hotel

- Number of rooms
- Meeting facilities
- Food and beverage facilities
- Fitness Center
- Business Center
- Other amenities
- Ideal configuration of hotel in terms of location (adjacent to the convention/conference facility or integrated into the convention facility)

TASK IV SITE EVALUATION

The Consultant will:

- Determine upgrades and improvements needed at current Seguin Coliseum.
- Determine the amount of land required for development of the project considering the recommended size of the facilities and requirements for parking.
- Provide recommendations on potential siting for the project that considers the area that

will best take advantage of the City's cultural and natural resources and generate the most demand.

The Consultant will work with the City of Seguin to identify and short-list potential sites. The site evaluation will provide a comparison of potential sites (up to five). Sites will be evaluated in terms of suitability for development of the proposed facility. Sites will be ranked based on several criteria specifically developed for this project including the following:

- Site size and configuration
- Site development/site preparation needed
- Visibility
- Vehicular and pedestrian access
- Proximity to, and the potential for, successful linkages with existing adjacent facilities such as:
 - Parking facilities
 - Existing hotel facilities
 - Proposed or new hotel development
 - Amenities (retail restaurants, entertainment, etc.)
- Potential for the development of positive perceptions within the greater metropolitan San Antonio community
- Potential impact on public/private financingPotential for the development of additional supporting facilities including hotel, transit, retail, restaurant, entertainment, etc.
- Land availability for possible future expansions
- Growth strategy options
- Potential to stimulate economic development
- Environmental considerations
- Cost
- Other relevant issues

TASK V FEASIBILITY STUDY

Operating revenues and expenses will be based on estimates of utilization of the proposed Seguin convention/conference facility and site selected in previous task.

Based upon the market study, Consultant will separately project annual (each year over 20 years) facility-related **operating revenues** for a new convention center including:

- Building and equipment rental
- Food and beverage
- Event services
- Parking

- Naming/sponsorship opportunities
- Merchandise
- Box Office
- Advertising
- Membership/fund raising
- Endowment income
- Other revenue sources

Based upon the market study, Consultant will separately project annual (each year over 20 years) **on-going operating expenditures** for a new convention center including items such as the following:

- Personnel
- Utilities
- Insurance
- Contract services
- Marketing/ advertising
- Public relations
- Maintenance, repairs and supplies
- Administration
- Other direct operating costs

Consultant will prepare a net operating income statement (by year over 20 years) that incorporates the operating revenues and expenditures to arrive at a projected surplus or loss that will require a subsidy.

Consultant will recommend the optimal pricing and leasing strategy for the project to maximize its use and financial feasibility.

Cash Flow Analysis for Hotel Operations

Based on estimated occupancy and average daily room rate analysis, Consultant will prepare estimates of financial performance. This analysis should include the following:

- Analysis of comparable operating data
- Analysis of fixed and variable components
- Departmental revenues
- Departmental expenses
- Fixed costs
- Local cost factors such as property tax, insurance, and unionization
- Cash flow before debt service, depreciation and income taxes

- Analysis of relevant ratios and amounts per occupied room and per available room
- Other relevant analysis

TASK VI FINANCING OPTIONS

The City of Seguin is seeking creative arrangements for constructing and operating the convention campus including public/private partnerships/operating agreements with private management companies, operating agreements with hotel management companies, and/or development agreements with potential hotel and convention facility developers. Consultant will identify and present pros and cons of various public and private financing methods and funding sources which may be used for the proposed facilities, including:

- Revenue bonds
- Public/private partnerships
- Operating/development agreements
- General obligation bonds
- Tax increment financing
- State participation
- Naming rights
- Certificates of participation
- Other sources

Potential sponsorship and partnership opportunities will be identified which may include:

- Facility naming rights
- Direct financial support
- Contribution of technical or equipment services
- Cooperative marketing efforts
- Other sponsorship and partnership opportunities

Case studies on financing of other recently built convention centers, conference centers and performing arts centers should be provided.

TASK VII DEVELOPMENT COST ANALYSIS

The Consultant will obtain an estimate for development costs for the proposed convention center campus building program. The top three ranked sites identified in Task III will be studied further with basic descriptive data provided on

- Size
- Topography
- Zoning
- Utility
- Other site specific characteristics

Potential site plans will be completed for each of the three top ranked sites. The report will also include narrative descriptions of these top ranked sites as well as the buildings and systems which might result.

The final site evaluation will include two concept renderings depicting how facilities recommended by the study could appear as a completed project.

The number one site option will be used as the basis of a cost analysis for the anticipated development. The cost analysis should include

- Probable acquisition costs
- Probable relocation costs, if any
- Estimated A&E, consultant and developer fees
- Estimated construction costs for each component of the recommended program including capital construction, site related property acquisition, and land preparation costs. Construction costs are to be provided separately for the convention center, hotel, and parking facility
- Estimated costs for site and parking improvements

Consultant will identify potential revenue strategies to support the initial capital cost of the project and prepare an estimated timetable for construction of the project.

TASK VIII ECONOMIC IMPACT STUDY

The economic benefit of the proposed convention campus on the city, county, and state should be estimated in terms of additional spending by attendees at conventions, trade shows, and other events. Spending by event attendees should be measured in terms of direct or “first round” spending as well as the “multiplier effect” from subsequent rounds of spending. The total benefits (initial and subsequent) should be shown in terms of

- Jobs- equivalent number of new employees supported by direct and indirect spending
- Income- changes in personal earnings resulting from increased employment supported by new dollars flowing into the economy
- Sales volume- increase in total aggregate economic activity resulting from new

expenditures or new dollars imported into the economy as a result of the new center's operations or spending by non-residents or residents, who, without the facility would have spent their dollars outside the local area

The City of Seguin will also benefit from the proposed center's operations in the form of increased tax revenues. The fiscal impacts on sales tax, hotel occupancy tax, personal income tax and motor fuel tax should be included.

The report should also contain estimates of economic and fiscal impacts from the construction of the facility.

RFP RESPONSE SUBMITTAL ITEMS

Submittals must include the following items to be considered complete and responsive to this Request for Proposals:

1. A one-page cover letter summarizing the Consultant's interest in the project and identifying the contact information of the project manager/key contact.
2. A detailed Executive Summary describing the stability of the firm, the experience and qualifications, and general suitability of the Consultant to perform this work.
3. Names and email addresses of a principal, the project manager/key contact (if different) and key staff members who will work on the project. An organizational chart of the team (including sub-consultants) should also be submitted.
4. Names of any sub-consultants (including key personnel) and a summary of their scope of services.
5. A statement of project approach that addresses how the Consultant will accomplish the identified scope of work.
6. A proposed schedule that shows how the Consultant will be able to complete the project by the February 1, 2023 deadline. This should include key milestones and a schedule for deliverables after receipt of a Notice to Proceed.
7. Total proposed consultant budget (i.e., fee) by major task and firm with costs broken down by staff, materials, and others study expenses. The fee proposal should also include an hourly rate for any additional services not originally contemplated by this proposal. The addition of any services or expenditures outside of the original cost proposal must receive prior written approval by the City of Seguin.
8. For the Consultant and any sub-consultants: description of a maximum of three (3) similar or related projects successfully completed within the last five (5) years including references with names and contact information. In each description, please describe the role of the firm in the project, as well as the roles played by any of the project team members who will be part of this study. For each project, please clearly demonstrate the quality of the work, and provide evidence of the firm's ability to meet established time requirements, the firm's response to project needs during the project and the firm's control of quality and budget. Letters of reference from past clients are welcome but are not a substitute for a complete description of the projects in this section.
9. As necessary, additional information demonstrating understanding and insights related to the project scope not included above.

Submit the response with two (2) hard copies and two (2) electronic copies on USB drives in a sealed envelope. Proposals should be submitted to the Office of the City Secretary, City of Seguin, 205 N. River, Seguin, Texas 78155, in an envelope no smaller than 8 ½" x 11" and clearly marked in the lower left hand corner:

RFP: Feasibility Study

RFQ #TF-2022-27

To be opened at 3:00 p.m., Tuesday, July 12, 2022

The response must be received by the date and time specified. Late responses will not be considered under any circumstances. Proposals received after the bid deadline will be filed unopened. Emailed responses or other forms of electronic communication and other responses to this Request for Proposals will NOT be accepted.

If additional information is necessary to assist the respondent in interpreting these specifications, written questions should be directed via email to Twila Wood, Purchasing Manager, at twood@seguintexas.gov. Responses to questions received before the deadline below will be answered by Addenda.

RFP AND PROJECT TIMELINE

Release and Distribution of RFP	June 8, 2022
Deadline to submit RFP Questions	June 22, 2022 (5:00 PM Seguin, TX)
Responses to Questions (Addenda issued)	June 27, 2021 (5:00 PM Seguin, TX)
Deadline for Submitting Proposals	July 12, 2022 (3:00 PM Seguin, TX)
Meetings with Finalist(s)	TBD
City Council Review of Recommended Award	TBD, August 9 or 23, 2022
Notice to Proceed	TBD pending City Council approval
Project Completed by	February 1, 2023

EVALUATION CRITERIA AND SELECTION PROCESS

An evaluation committee will select the most highly qualified provider for the services described in this RFP on the basis of the provider's demonstrated competence and qualifications taking into account the provider's ability to work with staff, the committee and other entities during the process. The selection will be based on the qualifications of the Consultant to complete the scope of work on time, within budget, and completing all tasks. It is City of Seguin's intent to select directly from information gained from the submittal review and interview process. City of Seguin reserves the right to call references provided in the submittal and to require phone, remote/electronic or personal interviews with firms for additional evaluation. Approval and award by Seguin City Council is final.

After an initial evaluation and scoring of statements, an interview and presentation from the top scoring firms may be conducted. Discussions may be conducted individually with firms who submit responsive statements and who are determined reasonably qualified for award of the contract. The City of Seguin reserves the right to reject any and all submittals and does not guarantee a contract will be awarded. All costs associated with the preparation of the statements, site visits, presentations, and any other costs are the responsibility of the submitting firm. Responding to this RFQ constitutes understanding and agreement to methods of evaluation and selection.

City of Seguin reserves the right to accept, reject, or negotiate any or all proposals, including the right to award the contract in whole or in part.

The following criteria will be used for the evaluation:

- A. **20 % Experience and Qualifications** as evidenced by:
 - 1. Company background and history
 - 2. Relevant experience with other projects by individuals
 - 3. Client references (recent and long-term)

- B. **20 % Strength of the proposed Project Team** as evidenced by:
 - 1. Appropriateness of management personnel and technical staff proposed.
 - 2. Organizational approach to project management including workflow, reporting and quality assurance procedures

- C. **20 % Quality of the proposed approach to the scope of work** as evidenced by:
 - 1. Understanding and discussion of technical issues
 - 2. Methodology and technical plan of operations
 - 3. Project management plan and quality assurance procedures
 - 4. Innovation and thoughtfulness in work approach

- D. **20 % Ability to successfully complete the project** as evidenced by:
1. Understanding of task sequencing and major milestone events
 2. Adequacy of resources
 3. Ability to complete work on a timely basis and meet deadlines
 4. Efficiency in use of available study resources
- E. **20 % Response Characteristics**
1. Adherence to the required format
 2. Completeness of submittal
 3. Proposal cost
 4. Cost Breakdown
-

ADDITIONAL TERMS AND CONDITIONS

- 1) **Insurance Requirements.** Consultant agrees to provide and maintain insurance coverage until the contract is completed and to furnish certificates from its insurance carriers showing that it carries insurance in compliance with the City's insurance requirements, see Attachment A.
- 2) **Restrictions on Lobbying Activity.** Respondents are prohibited from directly or indirectly communicating with City Council members regarding the firm's qualifications or any other matter related to the eventual award of a contract for the services requested under this solicitation. Respondents are prohibited from contacting City of Seguin or Seguin Convention & Visitor Bureau staff members regarding their qualifications or the award of a contract, unless in response to an inquiry from a staff member. Any violation will result in immediate disqualification of the respondent from the selection process.
- 3) Upon issuance of this solicitation, all communications and requests for clarification or objections shall be directed in writing to the Purchasing Manager for response, determination and dissemination to all firms. Any communication by firms or their representatives toward other city officers or employees regarding this solicitation or the award of a contract are prohibited and will constitute grounds for disqualification of a proponent.
- 4) City of Seguin reserves the right to amend the RFP at any time.
- 5) City of Seguin reserves the right to determine the successful respondent. City Council approval is final.
- 6) City of Seguin reserves the right to reject any or all proposals and to negotiate the terms of the contract, including the reimbursement rates, with the selected firm prior to entering into a contract. If contract negotiations cannot be concluded successfully with the highest scoring respondent, the City may negotiate a contract with the next highest scoring respondent and so on until an agreement is reached.
- 7) If for any reason the selected firm is not able to commence services within 30 days after the award of the proposal, City of Seguin reserves the right to award the contract to another qualified consulting firm.
- 8) Expenses incurred in the preparation of submittals, presentations and other incidental activities related to this solicitation are solely the responsibility of the respondent.
- 9) All data, documents and other information provided to City of Seguin by the

- Consultant because of this RFP shall become property of City of Seguin.
- 10) City of Seguin expects the Consultant to respond to routine questions which do not require considerable research on a complementary basis.
 - 11) City of Seguin will not reimburse the Consultant for expenses beyond the cost figures agreed to by the Consultant and City of Seguin. The only exception would be an amendment to the contract as a result of a substantial and approved change in the scope of work, as directed by City of Seguin, or for extra copies of plans or extra meetings.
 - 12) The Consultant shall at no time pursue additional compensation for work not previously agreed to in writing by City of Seguin through a contract amendment. It is the obligation of the Consultant to identify items of additional work and to submit a written request with a cost proposal prior to the performance of any additional work.
 - 13) The Consultant shall not engage any subcontractor not identified in the original proposal without prior approval of City of Seguin.
 - 14) The consulting firm shall not assign any interest in this proposal and shall not transfer any interest in the same without the prior written consent of City of Seguin.
 - 15) For the purposes of this agreement, the Consultant shall be deemed to be an independent contractor and not an employee of City of Seguin.
 - 16) No official or employee of City of Seguin who exercises any responsibilities in the review, approval or carrying out the proposal shall participate in any decision which affects his or her direct or indirect personal or financial interest.
 - 17) A schedule of payments to the Consultant will be negotiated with the successful respondent, and will be tied to completion of various stages in the scope of work. A minimum of twenty-five percent (25%) of the total contract price will be withheld until the City of Seguin receives a final report from the Consultant.
 - 18) **Public Information Notification.** The City considers all materials, information, communications and correspondence in any form from the respondents to this RFP to be non-proprietary and non-confidential and, therefore, subject to public disclosure under the Texas Public Information Act (Texas Government Code 552.00-1 et seq.) after a contract is awarded. Respondents are informed that the City will abide by all statutes, court rulings and opinions of the Texas Attorney General concerning disclosure of RFP information. Should any part or section be considered by the Respondents to be "proprietary" or "confidential" in nature, each page or section should be designated as "proprietary" or "confidential". Respondents should

be prepared to fully justify these exclusions to the State Attorney General's Office should it be required.

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed;
- or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

OFFICE USE ONLY

Complete Nos. 1 - 4 and 6 if there are interested parties.
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO Interested Party.

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

 Signature of authorized agent of contracting business entity
 (Declarant)

ADD ADDITIONAL PAGES AS NECESSARY

ATTACHMENT A

(Revised 2/18/14)

INSURANCE

SECTION A. Prior to the approval of this contract by the City, CONTRACTOR shall furnish a completed Insurance Certificate to the Purchasing office. The certificate shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and shall furnish and contain all required information referenced or indicated thereon. CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE IS RECEIVED BY THE CITY OF SEGUIN'S PURCHASING DEPARTMENT, and no officer or employee of the City shall have authority to waive this requirement.

INSURANCE COVERAGE REQUIRED

SECTION B. CITY reserves the right to review the insurance requirements of this section during the effective period of the contract and to adjust insurance coverages and their limits when deemed necessary and prudent by CITY, based upon changes in statutory law, court decisions, or the claims history of the industry as well as the CONTRACTOR.

SECTION C. Subject to CONTRACTOR'S right to maintain reasonable deductibles in such amounts as are approved by CITY, CONTRACTOR shall obtain and maintain in full force and effect for the duration of this contract, and any extension hereof, at CONTRACTOR'S sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to CITY, in the following type(s) and amount(s):

<u>TYPE</u>	<u>AMOUNT</u>
1. Workers' Compensation and Employer's Liability	Statutory
NOTE: For building or construction projects, and services provided at City-owned facilities, the successful Contractor shall meet the minimum requirements defined in the Texas Workers' Compensation Commission Rule 28 TAC §110.110 which follows this insurance attachment.	
2. Commercial General (public) Liability including coverage for the following:	
a. Premises operations	Combined single limit for bodily injury and property damage of \$500,000 per occurrence or its equivalent with an aggregate limit of \$1,000,000.
b. Independent contractors	
c. Products/completed operations	
d. Personal injury	
e. Advertising injury	
f. Contractual liability	
g. Medical payments	
h. Professional liability	
i. Underground hazard*	
j. Explosion and collapse hazard*	
k. Liquor liability*	
l. Fire legal liability*	
m. City's property in Contractor's* care, custody, or control	
n. Asbestos specific liability*	
* Not required for this contract	
3. Comprehensive Automobile Liability insurance, including coverage for loading and unloading hazards, for:	Combined single limit for bodily injury and property damage of \$500,000 per occurrence or equivalent.

- a. Owned/leased vehicles
 - b. Non-owned vehicles
 - c. Hired vehicles
4. **Errors and Omissions** insurance policy (when applicable) Provide a prudent amount of coverage for the willful or negligent acts or omissions of any officers, employees or agents thereof.

ADDITIONAL POLICY ENDORSEMENTS

CITY shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by CITY, CONTRACTOR shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.

REQUIRED PROVISIONS

CONTRACTOR agrees with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following required provisions.

- a. Name the City of Seguin and its officers, employees, and elected representatives as an Additional Insured(s), (as the interest of each insured may appear) to all applicable coverage.
- b. Provide for 30 days notice to City for cancellation, non-renewal, or material change.
- c. Provide for notice to City at the address shown below by registered mail.
- d. CONTRACTOR agrees to waive subrogation against the City of Seguin, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance.
- e. Provide that all provisions of this agreement concerning liability, duty, and standard of care together shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
- f. For coverages that are **only** available with claims made policies, the required period of coverage will be determined by the following formula: Continuous coverage for the life of the contract, plus one year (to provide coverage for the warranty period) and an extended discovery period for a minimum of five years which shall begin at the end of the warranty period.

NOTICES

CONTRACTOR shall notify CITY in the event of any change in coverage and shall give such notices not less than thirty (30) days prior to the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE. All notices shall be given to CITY at the following address:

Purchasing Department
 City of Seguin
 P.O. Box 591
 Seguin, Texas 78156

SECTION D. Approval, disapproval, or failure to act by CITY regarding any insurance supplied by CONTRACTOR shall not relieve CONTRACTOR of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate CONTRACTOR from liability.

WORKERS COMPENSATION INSURANCE
for
Building or Construction Projects and Services Provided at City-Owned Facilities

TEXAS WORKERS' COMPENSATION COMMISSION RULE 28 § 110.110

As required by the Texas Workers' Compensation Rule 28, §110.110, the Contractor shall accept the following definitions and comply with the following provisions:

Workers' Compensation Insurance Coverage

A. Definitions:

1. Certificate of coverage ("certificate")-A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
2. Duration of the project-includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the City of Seguin.
3. Persons providing services on the project ("subcontractor" in Section 406.096) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

C. The Contractor must provide a certificate of coverage to the City of Seguin prior to being awarded the contract.

D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the City of Seguin showing that coverage has been extended.

E. The Contractor shall obtain from each person providing services on a project, and provide to the City of Seguin:

1. A certificate of coverage, prior to that person beginning work on the project, so the City of Seguin will have on file certificates of coverage showing coverage for all persons providing services on the project; and
2. No later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.

G. The Contractor shall notify the City of Seguin in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and

stating how a person may verify coverage and report lack of coverage.

- I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
1. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 2. Provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project.
 3. Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 4. Obtain from each other person with whom it contracts, and provide to the Contractor:
 - a. A certificate of coverage, prior to the other person beginning work on the project; and
 - b. A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
 5. Retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;
 6. Notify the City of Seguin in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 7. Contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the City of Seguin that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the City of Seguin to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the City of Seguin.

As defined by the Texas Labor Code, Chapter 269, Section 406.096(e), building or construction is defined as:

1. Erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
2. Remodeling, extending, repairing, or demolishing a structure; or
3. Otherwise improving real property or an appurtenance to real property through similar activities.

The employment of a maintenance employee who is not engaging in building or construction as the employer's primary business does not constitute engaging in building or construction.

**CITY OF SEGUIN
INSURANCE REQUIREMENT AFFIDAVIT**

**To be Completed By Appropriate Insurance Agent
and submitted with bid proposal.**

I, the undersigned Agent/Broker, certify that the insurance requirements contained in this bid document have been reviewed by me with the below identified Contractor. If the below identified Contractor is awarded this contract by the City of Seguin, I will be able to, within ten (10) days after being notified of such award, furnish a valid insurance certificate to the City meeting all of the requirements defined in this bid.

Agent (Signature)

Agent (Print)

Name of Agency/Broker: _____

Address of Agent/Broker: _____

City/State/Zip: _____

Agent/Broker Telephone #: () _____

CONTRACTOR'S NAME: _____

(Print or Type)

NOTE TO AGENT/BROKER

If this time requirement is not met, the City has the right to invalidate the bid award and award the contract to the next lowest bidder meeting specifications. Should an awarded bid be invalidated the Contractor may be liable for breach of contract. If you have any questions concerning these requirements, please contact the Purchasing Manager for the City of Seguin at (830) 401-2451

GENERAL CONDITIONS OF BIDDING

These general conditions apply to any procurement of products or services by the City of Seguin. Failure to comply with these General Conditions of Bidding may result in the bid being disqualified.

1. DEFINITION OF TERMS

A. "Bid documents" mean the entire packet of documents provided to bidders, including, but not limited to the General Conditions of Bidding, General and/or Technical Specifications, Special and Supplementary Conditions, Information to Bidders, Bid Form(s) and any Addendum.

B. "Bidder" means a person or firm submitting a bid, proposal, or quote to provide equipment, material, and/or services necessary in the performance of these specifications, and competing for award of a contract.

C. "Bid" or "Proposal" means an offer to perform or provide the requirements specified herein. "Furnish" or "provide" means to supply, equip, and deliver the specified equipment, material and/or services to the Purchaser.

D. "Formal Bid" is a formally advertised solicitation for acquiring goods, services, and construction that requires a public opening of sealed bids or proposals, generally \$50,000 or more.

E. "Informal Bid" is a competitive bid or price quotation for supplies or services under \$50,000 that is conveyed by letter, telephone, or other means and does not require a sealed bid, public opening, or public reading of bids.

F. "City", "Purchaser", or "Owner" shall refer to the City of Seguin, PO Box 591, Seguin, Texas 78156-0591.

G. "Contract" means the contract awarded pursuant to this solicitation.

H. "Contractor" or "Vendor" means the bidder to which a contract award has been made by the City.

I. "Purchase Order" means the document issued by the City that creates a legal binding contract between the City and the Contractor and authorizes the Contractor to ship goods pursuant to the contract.

2. SUBMISSION OF BIDS

A. All bids must be on blank forms furnished by the Purchasing Department and must be written in ink or typed. Pencil quotations will not be considered. Proposals must be submitted on the forms or in the format called for in specifications. Each must be executed personally by the bidder, or if executed by an agent, a power of attorney or other evidence of his authority to act on behalf of the bidder must accompany the bid. If the bidder is a corporation, the certificate of corporate bidder must be executed under the corporate seal by some duly authorized officer of the corporation other than the officers signing the bid. By execution of the bid, the bidder accepts all general and special conditions of the contract and the specifications.

B. **Formal** sealed bids and proposals must be received at the date, time, and place specified in the bid document packaged in a sealed envelope (8 1/2" x 11" minimum) clearly marked with the bid or project name, bid number, and date/time of opening, unless otherwise specified. An early postmark will not suffice. Bids and proposals will be publicly opened and read followed by evaluation and award at a later date. **Formal bids and proposals (\$50,000 or higher) may NOT be faxed or submitted via e-mail.**

C. Informal bids are due at the date, time, and place stated in the bid document. **Informal bids (less than \$50,000) may be faxed or submitted via e-mail.**

D. Each Bidder agrees that its price will remain firm and subject to acceptance by the City for a period of sixty (60) calendar days from the bid opening date. The prices quoted in the bid shall not be subject to escalation except where otherwise clearly indicated by the Bidder or by the City in bid documents. The basis for the escalation shall be clearly indicated in either case.

E. All information required by the bid documents will be furnished. The bidder will print or type its name, in ink, and manually sign the bid sheet. The bid sheet, with original signatures, must be submitted.

F. All prices shall be quoted as required in the specifications. Unit prices will be shown when called for on the bid sheet, and where there is a conflict between the unit price shown and the total price shown, the unit price will govern.

G. No change in price will be considered after bids have been opened. The City reserves the right to negotiate prices as submitted by proposal as allowed by state statute.

H. In case of ambiguity or lack of clarity in stating prices in the bid, Purchaser reserves the right to adopt the price written in words or reject the bid. Any ambiguity in the bid as a result of omission, error, unintelligible or illegible wording shall be construed in the favor of the City.

I. If this bid is altered, any erasure or alteration of figures on the item on which the erasure or alteration is made must be initialed by signee of this bid.

J. The City reserves the right to extend the bid closing time and date. Notification will be made by addendum.

K. The City reserves the right to increase or decrease the quantity specified, unless the bidder specified otherwise.

3. WITHDRAWAL OF BIDS

A. A Bidder may withdraw a bid before Council acceptance of the bid without prejudice to himself by a written request addressed to the Purchasing Manager.

B. If there is an honest mistake in the bid, due to clerical errors, and the bidder calls attention thereto promptly, the bidder will not be bound by the bid.

C. When the mistake was a result of a bidder's negligence, and City has no knowledge of the mistake when bids were opened, and awarded a contract based on the bid, bidder will not be released and shall be bound by the bid.

D. If a mistake is not discoverable and verifiable by the City, bidder's incorrect interpretation of Engineering specifications set forth in a construction contract will not release him from his obligations, once a contract has been awarded by City Council and bidder has received notice of such award.

4. GENERAL CONDITIONS

Bidders will submit their bids or proposals upon the following express conditions:

A. Bidders shall thoroughly examine all drawings, specifications, plans, schedules, instructions, and all other contract documents pertaining to this bid.

B. Bidders shall make all investigations necessary to thoroughly inform themselves regarding plant and facilities for delivery of materials or equipment as required by the bid conditions. No plea of ignorance by the Bidder of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the Bidder to make the necessary examinations and investigations will be accepted as a basis for varying the requirements of the City or the compensation to the vendor.

C. If any bidder is in doubt as to the true meaning of the specifications, other bid documents, or any part thereof, they may submit a written request for clarification to the Purchasing Manager. A request for clarification should be submitted by the deadline, if any, indicated in the specifications.

D. All materials, equipment, supplies which are new, non-standard to the City of Seguin, and/or items which are to be listed as an alternate or exception must be pre-approved PRIOR to placing them on a bid proposal. In order to fairly evaluate all bids, sufficient time requirements for possible field testing or demonstrations should be allowed.

E. Bidders are advised that City contracts are subject to all legal requirements under Local, State and Federal statutes, ordinances, and regulations. Any bid, after being opened, becomes subject to the Public Information Act, Government Code Chapter 552; therefore bidders must clearly indicate any portion of the submitted bid that the bidder claims is not subject to public inspection under the Public Information Act.

F. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall benefit financially, directly or indirectly, in the sale to the City of any materials, supplies or services, except on behalf of the City as an officer or employee.

G. The City of Seguin is committed to maintaining fair and open competition as required by local, state, and federal laws and statutes. Every effort is made to maintain the highest level of ethical conduct in every aspect of the procurement process. Sharp business practices or high-pressure tactics will not be tolerated. Qualification and selection of vendors is based on those vendors who share the same high standards of ethical conduct.

5. DESCRIPTION OF GOODS

A. Any catalog or manufacturer's reference in this bid is merely descriptive, and not restrictive, unless otherwise noted, and is used only to indicate type and quality of material. Any such references are made a part of these contract documents as if incorporated verbatim herein.

B. The term "Or Equal", if used, is intended to allow substitution of a brand which has all the essential performance, features, reliability, and other salient characteristics as the brand name and model stated in the item description. "Or Equal" is intended to establish a level of quality and function and is not to be interpreted as a preference for a particular brand. Other brands meeting these minimum requirements will be accepted. Bid submitted on an "Or Equal" item must clearly identify the proposed product, the quantity of the product, model, and type, as applicable.

C. Alternate bids will not be considered unless expressly authorized by the bid documents.

6. PREPARATION OF BID

Bidders will prepare bids in accordance with the following:

A. Specifications are written to encourage competition. The specifications herein shall be the basis of comparison between bidders. There is no intent to discriminate against any supplier or vendor but rather, to set a definite standard of performance. Bidders are required to quote services and/or equipment that will meet or exceed the minimum or maximum specifications herein.

B. Any omission in the specifications of any minor requirement necessary to make each unit complete and functional shall not relieve the Supplier of responsibility to furnish any material or equipment necessary.

C. The City reserves the right to request clarification to assist in evaluating the bidder's response when the bid response is unclear with respect to product pricing, packaging or other factors. The information provided is not intended to change the bid response in any fashion and such information must be provided within two days from request.

D. Bidders shall not include federal taxes nor State of Texas limited sales, excise and use taxes in bid prices since the City of Seguin is exempt from payment of such taxes under section 151.309 of the Texas Tax Code.

E. By submitting a bid, each bidder certifies that it is a duly qualified, capable, and bondable business entity, that it is not in or contemplating bankruptcy or receivership and that it is not currently delinquent with respect to payment of taxes assessed by any political subdivision.

F. By submitting a bid, each bidder certifies that it does not currently owe any money to the City.

G. The City is exempt from the Federal Excise and Transportation Tax, and the Limited Sales and Use Tax. Unless the bid form or specification specifically indicates otherwise, the price bid must be net exclusive of the above-mentioned taxes and will be so construed.

H. Prompt payment discounts will not be considered in determining low bids and making awards.

7. BID DEPOSIT

No bid deposit will be expected of bidder UNLESS specifications expressly provide otherwise. If a bid bond is required, the submitted bond may be in the form of a cashier's check, cash, a certified check made payable to the City of Seguin or an original bond submitted in the form required by the City in the Bid Documents. The bond shall be executed by a surety authorized by the Texas State Insurance Commission and must be signed by both the surety and the bidder. Should a bid deposit be presented in a form not acceptable to the City, the bid will not be considered.

8. EXCEPTIONS

If Bidder takes exceptions to any provisions of the specifications, the exceptions must be specifically and clearly identified by section in Bidder's bid, and Bidder's proposed alternative must also be provided in the bid. Bidders cannot take a 'blanket exception' to the entire bid document.

9. ADDENDA

Any clarification or interpretation of the bid, if made, will be made only by written addendum issued through the Purchasing Department and signed by the City of Seguin Purchasing Manager. A copy of such Addendum will be mailed or delivered to each person receiving bids. Addenda to the bid documents may be issued in response to a request for clarification or objection, or for any other reason the City considers advisable. Once issued, an addendum becomes a part of the bid documents. All addenda can be viewed and downloaded at the City's website: www.seguintexas.gov. It is the bidder's responsibility to check this site to determine if the City has issued any addenda. The City will not be responsible for any other explanation or interpretation of the bid made or given prior to the award of the contract.

10. REJECTION OF BIDS

A. The City of Seguin reserves the right to accept or reject any or all bids, and to waive any informalities and technicalities. The City of Seguin shall consider all factors it believes to be relevant in

selecting the offer that provides the best value for the City including, but not limited to, the offered price. Causes for bidder disqualification and rejection of bids may include, but shall not be limited to:

1. Bidder's current inability to satisfactorily perform the work or service, or the bidder's previous failure to properly and timely perform its obligations under a contract with the City. Purchaser may make such investigation as is deemed necessary to determine the ability of the Bidder to provide the equipment, material, and/or services as required by this specification and to determine the adequacy of the proposed equipment, material, and/or services. The Bidder shall furnish, upon request, all such data and information requested for this purpose. The information provided is not intended to change the bid response in any fashion and such information must be provided within **two** days from request.
2. Bidder's current violation of any City ordinance.
3. Bidder's misstatement or concealment of any material fact in the bid.
4. Bid or proposal's nonconformance to law or the requirements of the bid specifications.
5. Failure to use or properly complete the bid/proposal form furnished by the City of Seguin.
6. Lack of signature by an authorized representative on the proposal form.
7. Alteration of bid form.
8. Evidence of collusion among proposers.
9. Omission of proposal guarantee (if required).
10. In the event that a bidder is, or subsequently becomes, delinquent in the payment of his, her or its City taxes, including state and local sales taxes, or any other City financial obligation, such fact shall constitute grounds for rejection of the bid, or if awarded the bid, for cancellation of the contract.

11. AWARD

- A. The City reserves the right to award a bid or contract to the lowest responsible bidder or to the bidder who provides goods or services at the "best value" for the City. Factors to be considered in the evaluation of the bids are price, quality, reputation and experience of Bidder, past relationship with City, long term cost, safety record, operating history of equipment, conformance to specifications, delivery, and other factors as deemed appropriate by the Purchaser.
- B. The City reserves the right to reject or accept all or any combination of bids deemed advantageous to the City.
- C. The City reserves the right to reject or accept all or any combination of base bid plus alternative bids when alternate bids are called for in bid documents, subject to available funding.
- D. Contractor is an independent contractor. Award of a contract does not create a joint venture between the Contractor and the City.

12. CONTRACT

- A. City's Bid Documents combined with the Vendor's response (bid or proposal) submitted to and accepted by the City, constitutes a contract between the City of Seguin and the selected vendor at the time the Seguin City Council awards the contract to such vendor.
- B. No further documentation is required, although the contracting parties may supplement the contract with further documentation. By submitting a bid or proposal, the vendor agrees to comply with the Terms and Conditions and other requirements set forth in the Bid Documents and to be further bound to the representations and information the vendor provides in the response.
- C. Acceptance of bidder's offer may be in the form of a "Notice of Award", a Purchase Order (P.O.) or a "Contract".

13. RESERVATIONS

THE CITY EXPRESSLY RESERVES THE RIGHT TO ACCEPT, REJECT OR CANCEL ANY AND ALL BIDS and:

- A. Waive any defect, irregularity, or informality in any bid or bidding procedure;
- B. Reissue a bid invitation or proposal;
- C. Procure any item by other allowable means;
- D. Waive minor deviations from the specifications when a bid meets the intent of the specifications and consider such bid if it is determined the bid's total cost is lower, the purpose for the bid is improved or not impaired, the bid amounts to the best value for the City, and/or the waiver otherwise results in a measurable benefit on behalf of the City.
- E. Extend any contract when most advantageous to the City as provided by original contract conditions.

14. WARRANTIES

A. WARRANTY FOR PRODUCT: The Contractor warrants to the City that all goods delivered will conform to the specifications, drawings, or other descriptions furnished or incorporated by reference, will be of merchantable quality, good workmanship, free from defects, and fit for all purposes specified in this contract. The Contractor shall not limit or exclude any implied warranties, and any attempt to do so shall render this contract voidable at the option of the City. The Contractor will provide copies of applicable warranties or guarantees to the Purchasing Manager. The City may return goods not meeting applicable warranties to the Contractor at the Contractor's expense.

B. WARRANTY FOR PRICE: The City will pay the price for goods specified by the Contractor's bid. The Contractor warrants its price to be no higher than the Contractor's current prices or charges on orders by others for products or services of the kind and specification covered by this bid contract for similar quantities under similar or like conditions and methods of purchase. In the event Contractor breaches this warranty, the prices or charges shall be reduced to Contractor's current prices or charges on orders by others, or in the alternative, City may cancel this contract without liability to Contractor for breach or Contractor's actual expense.

C. SAFETY WARRANTY: Contractor warrants that the goods sold to the City conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act (OSHA) as amended. In the event the goods do not so conform, the Contractor must correct or replace the goods at the Contractor's expense. If the Contractor fails to do so within a reasonable time, the City, at its discretion, may cause the correction to be made at the Contractor's expense, or may return the goods at the Contractor's expense and terminate this contract.

15. PROTESTS

A. The City Council is the final authority on issues relating to this contract. The Purchasing Manager is the City's representative in the award and administration of this contract, and will issue and receive all documents, notices, and correspondence.

B. Any protest to the City's consideration of any bid must be submitted in writing and delivered to the City of Seguin, ATTN: Purchasing Manager.

C. The protest may be delivered in person to the Purchasing office located at 816 Fred Byrd Drive, Seguin, Texas, or by certified mail, return receipt requested, to the following address: City of Seguin,

Purchasing Department, ATTN: Purchasing Manager, PO Box 591, Seguin, Texas 78156-0591.

D. The written protest must include the following information before it may be considered by the City:

- 1.** Name, mailing address, and business phone number of the protesting party;
- 2.** Identification of the bid or proposal being protested;
- 3.** A precise and concise statement of the reason/reasons for the protest which should provide enough factual information to enable the City to determine the basis of the protest;
- 4.** Any documentation or other evidence supporting the protest.

E. The Purchasing Department, in conjunction with the department responsible for the bid or proposal solicitation, will attempt to resolve the protest, including, at the City's option, meeting with the protesting party. If the protest is successfully resolved by mutual agreement, written verification of the resolution of each ground addressed in the protest will be provided to the City Manager. If the Purchasing Department is unable to resolve the protest, the protesting party may request the protest be reviewed and resolved by the City Manager.

F. A request for the City Manager's review must be in writing and received by the Purchasing Department within three (3) business days from the date the Purchasing Department informs the protesting party the protest cannot be resolved. The request for review must be delivered in person to the Purchasing Department at the address stated above or by certified mail, return receipt requested, to the mailing address stated above. If the protesting party fails or refuses to request a review by the City Manager within the three (3) days, the protest is deemed finalized and no further review by the City is required. Applicable documentation and other information applying to the protest may be submitted by the protesting party to the Purchasing Department before review by the City Manager. If the protesting party requests a review by the City Manager, such documentation will be forwarded to the City Manager for consideration. The City Manager may likewise notify the protesting party or any City department to provide additional information.

G. The decision reached by the City Manager will be final, but the protesting party may still appear before the City Council during the hearing of citizens' session.

16. SHIPMENT & DELIVERY

A. Bidder is to quote its lowest and best price F.O.B. Destination on each item to shipping location in Seguin, Texas unless otherwise specified in the bid documents. Pricing shall include packaging, transportation, unloading, and any trade and cash discounts, which may be taken if earned.

B. The bidder certifies all materials, parts, and equipment supplied or represented in response to this bid shall be new and unused unless noted elsewhere in the bid documents.

C. The title and risk of loss of the goods will not pass to the City until receipt and acceptance takes place at the FOB point. The City department receiving deliveries or issuing purchase orders under this contract will inspect and accept any and all deliveries made and may reject those items which are damaged or which do not conform to the specifications. The Contractor is responsible for the proper labeling, packing, and delivery to final destination, including replacement of rejected deliveries at no additional cost.

D. Delivery dates pertaining to this specification must be clearly stated in the bid form where required. The bidder will clearly state in the bid the time required for delivery upon receipt of contract or purchase order. Failure to specify delivery date or state unrealistically short or long

delivery dates may cause the bid to be disqualified. Proposed delivery time must be specific and such phrases "as required", "as soon as possible", or "prompt" may result in disqualification of the bid.

E. Vendor must keep the City advised as to the status of the delivery. When delivery delay can be foreseen, the Vendor shall give prior notice to the City.

F. Default in promised delivery, without acceptable reasons, or failure to meet specifications without remedy shall cause the City to purchase the goods elsewhere, and charge any increase in cost and handling to the defaulting vendor. This does not limit any other remedies to the City for damage entitled under the Uniform Commercial Code.

17. REJECTIONS

A. Delivered articles not in accordance with samples and specifications must be removed by the bidder at his expense. All disputes concerning quality of supplies delivered under this proposal will be determined by the City's Purchasing Manager or his/her designated representative.

B. All articles enumerated in the proposal shall be subject to inspection or delivery by an officer designated for the purpose and if found inferior to the quality called for, or not equal in value to the department's samples, or deficient in weight, measurements, workmanship or otherwise, this fact shall be reported to the Purchasing Manager who shall have the right to reject the whole or any part of the same.

18. PAYMENTS

A. Payment of invoices by the City shall be made thirty (30) days after receipt and acceptance of all equipment or performance of services covered by each purchase order or following the receipt of an accurate invoice, whichever is later, in compliance with state statute. Bidder shall state his bid in accordance with the standard payment terms and conditions of the City of Seguin of Net 30 days. All bids must be stated in terms of dollars and cents, the bidder's lowest, best, and final price.

B. Invoices submitted or otherwise used pursuant to the bid awarded under this IFB shall be presented to the City in the following form and content:

1. Each invoice must reference the City of Seguin contract, agreement, or P.O. number;
2. Only one contract, agreement, or project shall be billed on a particular invoice;
3. Each invoice must have a billing or invoice number and an Invoice Total.

C. The invoice requirements stated herein shall not be read to disallow or exclude other information that may be otherwise required or requested by the City. Such information required herein must be submitted only on an invoice and not in any other non-invoice form or document.

19. ASSIGNMENT

No right or interest in the contract shall be assigned, nor delegation of any obligation made by Vendor without the written permission of the City. Any attempted assignment or delegation by Vendor shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

20. WAIVER

No claim or right arising out of a breach of this 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.

21. FORCE MAJEURE

In the event that the performance by either party of any of its obligations under this contract is interrupted or delayed by events outside of their control such as acts of God, war, riot, or civil commotion, then the party is excused from such performance for the period of time reasonably necessary to remedy the effects of the events.

22. GRATUITIES

The City may, by written notice to the Vendor, cancel this contract without liability to the City if it is determined by the City that gratuities have been offered to any officer or employee of the City with a view toward securing a contract, securing favorable treatment with respect to the awarding, amending, or the making of any determinations in respect to the performance of such a contract. In the event City, as set forth in this paragraph, cancels this contract the City shall be entitled to recover from the Vendor all additional costs incurred by City as a result of the cancellation.

23. TERMINATION

A. DEFAULT: Failure by either party to perform any of its provisions will constitute a default and breach of contract, in which case, the other party may require corrective action within 10 days from the date the defaulting party receives written notice citing the nature of the breach. Failure of the defaulting party to take corrective action or to provide a satisfactory written reply excusing such failure within the prescribed 10 days will authorize the other party to terminate this agreement by written notice.

B. CONVENIENCE: The City reserves the right to terminate this contract upon 30 days written notice for any reason deemed by the City Council to serve the public interest. Termination for convenience will not be made when termination is authorized under any other provisions of this contract. In the event of such termination the City will pay the Contractor those costs directly attributable to supplies obtained in compliance with the contract prior to termination. Provided, however, that no costs will be paid to the Contractor which are recoverable in the normal course of doing business. The City is not liable for loss of any profits anticipated to be made hereunder.

C. FUNDING: The City retains the right to terminate this contract at the expiration of each of City's budget periods. This contract is conditioned on a best efforts attempt by City to obtain and appropriate funds for payment of any debt due by City herein.

D. FUNDING OUT: The State of Texas statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Should, during the term of this contract, funds be withdrawn by the funding authority, a Force Majeur shall be deemed to exist, and this contract may be terminated without penalty or recourse by either party.

24. ENTIRETY OF AGREEMENT/AMENDMENTS

This represents the entire agreement between the parties relating to the subject matter of this contract. Any prior agreements, promises, negotiations, or representations between the parties are not binding unless included in this contract. All amendments to this contract must be in writing and executed by both parties.

25. SEVERABILITY

In case any one or more of the provisions contained in this contract is held to be invalid or unenforceable in any respect by a court of proper jurisdiction, the invalidity, illegality or unenforceability will not affect any other provision of this contract, and this contract will be construed as if the invalid or unenforceable provision was not contained herein.

26. INSURANCE

If required, specific insurance provisions will be included in bid specifications. An original, certified

copy of an insurance certificate must be submitted within ten days from request. The successful vendor will be required to maintain, at all times during performance of the contract, the insurance detailed in bid specifications. Failure to provide this document may result in disqualification of bid.

27. INDEMNITY

The Vendor will indemnify, hold harmless and defend the City and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising from the negligent or intentional acts errors or omissions of the Vendor, its officers, employees or agents. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, and all other expenses incurred by the City arising in favor of any party, including the amounts of any damages or awards resulting from claims demands and causes of action for personal injuries, death or damages to property alleged or actual infringement of patents, copyrights, and trademarks and without limitation by enumeration, all other claims, demands, or causes of action of every character occurring, resulting, or arising from any negligent or intentional wrongful act, error or omission of the Vendor or its agents or employees. This obligation by the Vendor will not be limited by reason of the specification of any particular insurance coverage required under this Agreement.

28. PATENTS

The bidder agrees to indemnify and save harmless the City, the Purchasing Manager, and his/her assistants from all suits and actions of every nature and description brought against it or any of them, for or on account of the use of patented appliances, products or processes, and he shall pay all royalties and charges which are legal and equitable. Evidence of such payment or satisfaction shall be submitted, upon request of the Purchasing Manager, as a necessary requirement in connection with the final estimate for payment in which such patented appliances, products or processes are used.

29. CONFIDENTIALITY

The City of Seguin is governed by the Public Information Act ("The Act"), Chapter 552 of the Texas Government Code. All information submitted by prospective bidders during the bidding process is subject to release under The Act. On each page where proprietary information appears, information considered confidential must be labeled. Failure to so label the proprietary or confidential information shall be considered as a waiver of any confidentiality rights or interests. Disclosure of requested information will be determined in accordance with the Texas Public Information Act. You are not encouraged to submit such data and information unless it is absolutely required to understand and evaluate your response. If such data and information is submitted, you agree that the City shall not be liable for disclosure of such data and information and hereby release the City from any liability. In the event a request for public information is filed with the City which involves information labeled as confidential, you will be notified by the City of the request so that you will have an opportunity to contact the Attorney General as to why such information should not be released.

30. ANTI-LOBBYING PROVISION

Bidders are prohibited from directly or indirectly communicating with City Council members regarding the Bidder's qualifications or any other matter related to the eventual award of a contract for the services requested under this Invitation for Bids. Bidders are prohibited from contacting City staff members regarding their qualifications or the award of a contract, unless in response to an inquiry from a staff member. Any violation will result in immediate disqualification of the Bidder from the selection process.

Upon issuance of the Invitation for Bids, all bidder communications and requests for clarification or objections shall be directed in writing to the Purchasing Manager for response, determination and

dissemination to all bidders. Any communication by bidders or their representatives toward other city officers or employees regarding this Invitation for Bids or the award of a contract are prohibited and will constitute grounds for disqualification of a proponent. A lobbyist or a proponent or any of their agents may not do any act or refrain from any act for the express purpose and intent of placing any City official under personal obligation to the lobbyist or proponent.

31. CONFLICT OF INTEREST

A person or vendor seeking to contract with the City must file a Conflict of Interest Questionnaire (CIQ) if the person has a business relationship with the City, and either: has a business relationship with a city official or a city official's family member; or has given a gift worth more than \$250 to a city official or city official's family member within the previous 12-month period. A vendor required to file a CIQ must do so with the City's Purchasing Manager within seven business days of: (1) beginning contract discussions with the city; (2) submitting to the City an application, response to a request for proposals or bid; or (3) learning of the existence of the applicable business relationship. Vendors should see Texas Local Government Code Chapter 176 in an effort to determine its applicability. The conflict of interest questionnaire form is included herein and is available from the Texas Ethics Commission at www.ethics.state.tx.us.

32. CERTIFICATE OF INTERESTED PARTIES

Texas Government Code, Sections 2252.908 requires a business entity to submit a disclosure of interested parties to the governmental entity at the time the business entity submits the signed contract to the governmental entity following the guidelines prescribed by the Texas Ethics Commission at www.ethics.state.tx.us. The law applies to contracts that require an action or vote by the governing body of the governmental entity before the contract is signed. The Form 1295 is included herein. The completed Form 1295 must be submitted electronically by the business entity to the state. A copy of the certified Form 1295 including the certification number generated by the state must be provided to the City of Seguin at the time a bid or proposal is submitted. Information on the Form 1295 may be considered by the City during bid evaluation and award. The City will only officially acknowledge the Form 1295 submitted by the awarded vendor which will cause it to be publicly posted on the Texas Ethics Commission website.

33. ANTI-DISCRIMINATION IN EMPLOYMENT

The Bidder, if permitted, certifies complete compliance with the Federal Civil Rights Law and the American with Disabilities Act, agreeing to non-discrimination based on race, age, color, religion, disability, gender, ancestry, national origin, or place of birth in employment practices, programs and services shall include, but not be limited to, the following employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other compensation; and selection for training, including apprenticeship.

34. COMPLIANCE WITH FEDERAL WAGE AND TAX LAWS

The Bidder shall comply with all Federal, State and local laws and ordinances relating to Social Security, Unemployment Insurance, Income Tax Withholding, Workers' Compensation, pensions and similar matters.

35. LOCAL VENDOR PREFERENCE POLICY

Texas Local Government Code, Sections 271.905(a) and 271.9051 allow the City to consider a vendor's principal place of business in awarding certain contracts by way of competitive bids. This consideration is in effect to promote economic development opportunities through the contract by employing local residents and increasing tax revenue. The City of Seguin applies a local vendor preference to bids in compliance with state statute.

36. ANTI ISRAEL CERTIFICATION

In compliance with Texas legislature HB 89, by bidding on or accepting an order to provide goods or services to the City of Seguin, the vendor /supplier certifies that the company does not boycott Israel and will not do so at any time while doing business with the City of Seguin.

37. ENERGY BOYCOTT PROHIBITED

In compliance with Texas legislature **S.B. 13 (Birdwell/P. King) – Energy Boycott**: among other things, prohibits a city from entering into a contract with a value of \$100,000 or more that is to be paid from public funds with a company with more than 10 full-time employees for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

38. FIREARMS

In compliance with Texas legislature **S.B. 19 (Schwertner/Capriglione) – Firearms**: among other things, (1) prohibits a governmental entity from entering into a contract with a value of \$100,000 or more that is to be paid from public funds with a company with more than 10 full-time employees for the purchase of goods or services unless the contract contains a written verification from the company that it: (a) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (b) will not discriminate during the term of the contract against a firearm entity or firearm trade association; and (2) provides that the prohibition in (1) does not apply to a city that (a) contracts with a sole-source provider, or (b) the city does not receive any bids from a company that is able to provide the required verification required by (1)

39. NOTICES

All notices called for or required by this agreement will be addressed to Purchasing Manager, City of Seguin, 205 N. River Street, Seguin, Texas 78155, or such other party or address as either party designates in writing, by certified mail, postage pre-paid, or by hand delivery, and will be effective five days after mailing.

40. STATE AND FEDERAL FUNDED PROCUREMENTS

The City of Seguin follows State of Texas and Federal 2 CFR 200.318-326 and Appendix II to Part 200 procurement law and guidance in the purchasing and contract management of goods and services funded by state and/or federal funds. Additional policy guidance is contained in the City of Seguin Purchasing Policy which addresses the City's requirements pertaining to the procurement and expenditure of local, state and federal funds.

41. QUESTIONS

Questions regarding interpretation of specifications, bids, bid results or bid awards should be directed in writing to the Buyer indicated in the General and/or Technical Specifications or to the Purchasing Manager, twood@seguintexas.gov and be referenced by bid number and bid title.